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Supreme Court of the United States

OCTOBER TERM, 1949

No. 337

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
APPELLANT,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE
COMMERCE COMMISSION, CITY OF NEW OR-
LEANS, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF LOUISIANA

FILED SEPTEMBER 21, 1949.

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THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, CITY OF NEW ORLEANS, LOUISIANA, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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[fol. 1]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

RAILWAY LABOR EXECUTIVES' ASSOCIATION, Plaintiff

v.

UNITED STATES OF AMERICA, Defendant

[File endorsement omitted]

COMPLAINT TO SET ASIDE IN PART AN ORDER OF THE INTERSTATE COMMERCE COMMISSION—Filed February 16, 1949

The Railway Labor Executives' Association, by its attorneys, brings this action against the defendant and complains and alleges as follows:

1. This action is brought pursuant to the provisions of Title 28, United States Code, sections 1336, 1398, 2321-2325, and 2284, to set aside, enjoin and annul, in part, an order of the Interstate Commerce Commission dated April 7, 1948, entered by Division 4 of said Commission in a proceeding entitled Finance Docket No. 15920, *New Orleans Union Passenger Terminal Case*. A copy of said order and the accompanying report made a part thereof are attached hereto as Exhibit A.

2. The jurisdiction and venue of this Court is established by the above cited provisions of Title 28, United States Code, which include the requirement of a three judge court to hear and determine the action.

3. The Railway Labor Executives' Association, plaintiff herein, is a voluntary unincorporated association with which are affiliated the following standard international railway labor organizations:

Brotherhood of Locomotive Firemen & Enginemen.
Order of Railway Conductors of America.
Switchmen's Union of North America.
The Order of Railroad Telegraphers.
American Train Dispatchers' Association.
Railway Employes' Department, A. F. of L.
[fol. 2] International Association of Machinists.

International Brotherhood of Boilermakers, Iron Ship Builders & Helpers of America.

International Brotherhood of Blacksmiths, Drop Forgers and Helpers.

Sheet Metal Workers' International Association.

International Brotherhood of Electrical Workers.

Brotherhood of Railway Carmen of America.

International Brotherhood of Firemen & Oilers.

Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employes.

Brotherhood of Maintenance of Way Employes.

Brotherhood of Railroad Signalmen of America.

National Organization of Masters, Mates & Pilots of America.

National Marine Engineers' Beneficial Association.

International Longshoremen's Association.

Hotel & Restaurant Employees' and Bartenders International Union.

Railroad Yardmasters of America.

4. Certain of the foregoing organizations are the collective bargaining representatives for employees of the common carriers by railroad affected by the Commission's order herein sought to be enjoined in part, and have agreements with said carriers concerning rates of pay, rules and working conditions of such employees. Said agreements confer upon the said employees valuable property rights in relation to their employment. By virtue of the foregoing, plaintiff represents the interests of said employees; and this action is brought on their behalf.

5. Plaintiff's principal place of business is located in the District of Columbia at 10 Independence Avenue, S. W., Washington, D. C.

6. The United States of America is made the defendant herein pursuant to the provisions of section 2322 of Title 28, United States Code.

7. On November 21, 1947, the City of New Orleans, Louisiana, which through the agency of its Public Belt Railroad Commission, owns and operates a belt line railroad, together with certain common carriers by railroad filed a joint application with the Interstate Commerce Com- [fol. 3] mission for authority to construct and acquire

certain lines of railroad, to jointly own or use lines of railroad, and to abandon certain other lines or operations on such lines—all as necessary incidents to the construction of a new railroad passenger terminal at New Orleans and the removal within that city of certain trackage for the purpose of eliminating undesired grade crossings. The Commission's approval was also sought for the issue by the City of New Orleans of $15,000,000 in revenue bonds to partly finance the program. The full history and nature of the project, including the details of the various agreements effected for its consummation by the several railroad carriers and the City of New Orleans, are not material to the Commission's action herein alleged as unlawful, but such information is provided in the Commission's report (267 I.C.C. 763) here attached together with its order as Exhibit A.

8. The Railway Labor Executives' Association, plaintiff herein, was permitted to intervene and did intervene in the proceeding before the Commission as the representative of the interests of the employees of the railroad carriers involved. Such intervention was for the purpose of urging the Commission to provide, in any order authorizing the proposed transactions, a fair and equitable arrangement for the protection of railroad employees affected, as required by Section 5(2)(f) of the Interstate Commerce Act, 49 U.S.C. § 5(2)(f).

9. After hearing, Division 4 of the Commission on April 7, 1948, entered its report and order (Exhibit A) authorizing the proposed transactions with the exception of the proposed issuance of revenue bonds to the amount of $15,000,000, which was later authorized by Division 4 in a supplemental report and order dated May 6, 1948 (267 I.C.C. 760).

10. The authorizations granted by the Commission's report and order of April 7, 1948, were made subject to certain conditions imposed for the protection of employees. These conditions were not specifically enumerated in the said report and order but were incorporated therein by reference to another Commission decision in the following language (Exhibit A, p. 14):

> "We are of opinion that a fair and equitable arrangement for protecting the interests of employees ad-

versely affected by the applicants' proposals here will be provided by conditions similar to conditions (4) to (9), inclusive, imposed by us in *Oklahoma Ry. Co. Trustees Abandonment*, 257 I.C.C. 177 (197-201) which are similar to those prescribed in *Chicago, B. & Q. R. Co., Abandonment, supra*, and our approval and authorization herein will be granted subject to those conditions."

[fol. 4] The conditions referred to in the above quoted excerpt are attached hereto as Exhibit B.

11. In the course of its report (Exhibit A, p. 14), the Commission found that since the record showed definitely that employees will be adversely affected by applicants' proposals, it is appropriate to require a fair and equitable arrangement to protect the interests of the employees so affected, and that the benefit of such an arrangement necessarily must extend to all the railroad employees affected by the exercise of the authorizations granted. The Commission did not attempt to fix the exact number of employees who would be adversely affected but relied upon estimates that approximately 1022 employees would be affected by the transactions and that about 350 employees would lose their jobs (Exhibit A, p. 11). Plaintiff believes, and hereby alleges, as is disclosed by the Commission's report, that the transactions are of such a nature that their consummation will result in the displacement from their positions of approximately 350 railroad employees, but avers that the precise number of such employees and their identity is not capable of exact ascertainment.

12. The Commission further directed in its report and order that the said protective conditions should remain in effect only for a period of four years from the effective date of its order authorizing the transactions. Said effective date was fixed at 40 days after April 7, 1948 (Exhibit A, p. 20). The Commission concluded in its report that it had no authority to prescribe any other period (Exhibit A, p. 14).

13. On May 8, 1948, plaintiff herein petitioned the Commission to reopen the proceeding for reconsideration by the entire Commission, and upon such reconsideration to modify so much of the said report and order of Division 4

as concluded that the Commission was required by statute to limit the period of protection to four years from the effective date of its order.

14. In support of the petition for reconsideration and modification, attention was directed to the fact that the transactions approved by the Commission's order are of such magnitude that necessary financial arrangements and required construction work cannot be completed within a period of four years from the effective date of the Commission's order. The applicants in the proceeding before the Commission so represented and the Commission so [fol. 5] found by fixing a completion date for the construction authorized as of December 31, 1953, and providing that no abandonment of lines or operation would be permitted until such construction was completed (Exhibit A, p. 14). In the face of such determination, it was contended by plaintiff herein that modification of the limitation of the protective period to four years from the effective date of the order was required since otherwise no protection would be provided because such period would expire before the employees were affected. The completion of the project has been further delayed by events occur-ing since the date of the Commission's original order. On November 10, 1948, applicants petitioned the Commission to extend the authorized time for commencement of construction and time for completion to December 31, 1949, and December 31, 1954, respectively, on the ground that the issuance of bonds by which the project is to be financed has been delayed by litigation not yet terminated. By order dated November 22, 1948, the Commission extended the time for commencement and completion of construction as requested, stating as the basis for such extension that it appeared that for good cause shown applicants would be unable to commence or complete the construction within the time prescribed by the original order. Copies of the application for extension and the Commission's order of November 22, 1948, are attached hereto as Exhibits C and D, respectively.

15. It was further contended by plaintiff in its petition for reconsideration and modification that the Commission's construction of Section 5(2)(f) of the Interstate Commerce Act as affording it no authority to prescribe a period of protection other than one limited to four years from the

effective date of its order erroneously attributes an intention to Congress to afford no protection whatever to employees adversely affected by projects whose completion and attendant adverse effects occur subsequent to four years from the date of their authorization by the Commission. Section 5(2)(f) of the Interstate Commerce Act (49 U.S.C § 5(2)(f)) reads in part as follows:

> "As a condition of its approval, under this paragraph (2), of any transaction involving a carrier or carriers by railroad subject to the provisions of this part, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during [fol. 6] which such employee was in the employ of such carrier or carriers prior to the effective date of such order . . ."

Plaintiff contended in its said petition for reconsideration and modification that the second sentence of the said section above quoted, if properly interpreted, establishes a minimum standard of protection of a specific type, i.e., the imposition of conditions which will insure employees not being placed in a worse position with respect to their employment during the said four year period; that said sentence was not intended to nullify the preceding general provision of the section requiring the Commission to provide a fair and equitable arrangement to protect the interests of employees; and that the section as a whole vests in the Commission and imposes upon it the duty, in providing the required fair and equitable arrangement, to extend said protection for such time as may be necessary to accomplish the basic purpose of the statutory provision. The Commission, however, in its report interpreted the time limitation contained in the second sentence of Section 5(2)(f) as limiting its power

to provide employee protection of any kind to a period of four years from the effective date of its order (Exhibit A, p. 14).

16. On May 13, 1948, Division 4 of the Commission ordered the proceeding reopened for reconsideration of the issue submitted by the Railway Labor Executives' Association. On July 6, 1948, the full Commission denied the petition for reconsideration. A copy of the Commission's order of July 6, 1948, is attached hereto as Exhibit E.

17. That portion of the Commission's said order of April 7, 1948, which restricts the period of employee protection to four years from the effective date of said order is illegal and void for the following reasons:

(a) It erroneously interp-ets Section 5(2)(f) of the Interstate Commerce Act as requiring the Commission to limit all protection of employees adversely affected by transactions authorized under Section 5(2) to a period of four years following the effective date of the Commission's order of authorization irrespective of when the adverse effect occurs and whether it occurs within said period of four years;

(b) It fails to comply with the requirement of Section 5(2)(f) of the Interstate Commerce Act that as a condition to its approval of transactions under Section 5(2) the Commission shall provide a fair and equitable arrangement to [fol. 7] protect the interests of the railroad employees affected. Said order of the Commission provides no protection whatever to employees who will be adversely affected by authorized transactions which will not be completed until after the protective period prescribed by the order has expired;

(c) It represents an undue and erroneous restriction by the Commission as to the scope of power vested in it and duties imposed on it by statute, which restriction produces unfair and inequitable results contrary to the intent of Congress in Section 5(2)(f) of the Interstate Commerce Act;

(d) It erroneously interprets the several provisions of Section 5(2)(f) of the Interstate Commerce Act collectively in such manner as to completely nullify one of the specific provisions thereof;

(e) It erroneously construes the second provision of Section 5(2)(f), which is a minimum standard of protection directed specifically to employees not being placed in a "worse position with respect to their employment" during the four year period following the effective date of the Commission's order, as nullifying the first provision of Section 5(2)(f), which requires the Commission to provide, without limitations in point of time, a fair and equitable arrangement for the protection of the interests of the employees adversely affected;

(f) It is not supported by adequate findings. The ultimate or statutory finding that a fair and equitable arrangement for protecting the interests of employees adversely affected by the applicants' proposals will be provided by the conditions specified in the Commission's report is not supported by adequate basic findings and is, in fact, refuted by such subsidiary or basic findings as are contained in the Commission's report.

18. The report and order of the Commission, in the particulars above mentioned, are based on an erroneous, improper, and illegal interpretation and construction of the Interstate Commerce Act, as amended, and are not based upon adequate findings, contrary to the requirements of the statute and in excess of the Commission's statutory powers.

19. Plaintiff and the employees concerned represented by it are thus threatened with irreparable injury on account of the erroneous and unlawful construction placed by the Commission on Section 5(2)(f) of the Interstate Commerce Act in that they are subject to loss of employment, compensation, rights of seniority, and other valuable property rights [fol. 8] without the protection provided by law if the said portion of the Commission's order is allowed to stand. Plaintiff has fully pursued its administrative remedy before the Commission to the extent of applying for reconsideration and modification of the said report and order, which has been refused. Plaintiff and those represented by it have no remedy in the premises at law, by action for damages or otherwise, save by complaint to this Court pursuant to the provisions of the Judicial Code as aforestated.

Wherefore, plaintiff respectfully demands:

First: That, as provided by Section 2284 of Title 28, United States Code, upon the filing of this bill of complaint

the judge to whom it is presented shall notify the Chief Judge of the United States Court of Appeals for the District of Columbia Circuit to designate two other judges, at least one of whom shall be a circuit judge, to serve with the said district judge as a three judge court to hear and determine the action.

Second: That process issue against the defendant, the United States of America; that service of a copy of the complaint be made on the Attorney General of the United States, the United States Attorney for the District of Columbia, and the Interstate Commerce Commission; and that after answer by the defendant and after not less than five days notice to the parties the application herein be given precedence and assigned for hearing at the earliest practicable day as provided by Section 2284 of Title 28, United States Code.

Third: That upon hearing of this action, judgment issue setting aside and annuling as unlawful and void that part of the Commission's report and order of April 7, 1948 which holds that the Commission lacks statutory authority, in providing an equitable arrangement for the protection of employee interests adversely affected, to extend the period of protection beyond four years from the effective date of said order; and directing the Commission to take such action as will provide a fair and equitable arrangement for employee protection consistent with the basic statutory purpose and compatible with the requirements of this case.

[fol. 9] Fourth: That plaintiff be given such other, further, general, and different relief as the nature of the case may require and as the Court may deem proper in the premises.

Dated: February 16, 1949.

Frank L. Mulholland, Clarence M. Mulholland, Willard M. McEwen, 741 Nicholas Building, Toledo 4, Ohio; Edward J. Hickey, Jr., 620 Tower Building, Washington 5, D. C., ST-5366; Attorneys for plaintiff.

Of Counsel: Mulholland, Robie, McEwen & Hickey, 620 Tower Building, Washington 5, D. C.

[fol. 10] Secretary's Certificate to following papers omitted in printing.

[fol. 11] EXHIBIT "A" TO COMPLAINT

Interstate Commerce Commission

Finance Docket No. 15920

New Orleans Union Passenger Terminal Case

Submitted March 19, 1948. Decided April 7, 1948

1. Certificate and order issued authorizing construction of lines of railroad and acquisition of lines of railroad, permitting abandonment, or abandonment of operation, of lines of railroad, and authorizing and approving joint use or joint ownership of lines of railroad in Orleans and Jefferson Parishes, La., by the City of New Orleans, La., the Chicago, St. Louis & New Orleans Railroad Company, the Gulf, Mobile & Ohio Railroad Company, the Illinois Central Railroad Company, the Louisiana & Arkansas Railway Company, the Louisville & Nashville Railroad Company, Guy A. Thompson, trustee of the Missouri Pacific Railroad Company, the New Orleans & Northeastern Railroad Company, the New Orleans Terminal Company, the Texas & New Orleans Railroad Company, The Texas & Pacific Railway Company, and the Texas Pacific-Missouri Pacific Railroad of New Orleans, incident to the construction and operation of a union passenger terminal in New Orleans, La. Conditions prescribed.

2. Action in respect of the issue of $15,000,000 of City of New Orleans Union Passenger Terminal revenue bonds deferred.

Henry G. McCall, Michel Provosty, Francis P. Burns, Robert E. Quirk, Lucien M. Abbot, Stanfield Johnson, Harry McCall, Harold E. Spencer, Henry L. Walker, Charles A. Helsell, Leonard B. Levy, J. T. Suggs, and Walter J. Suthon, Jr., for applicants.

Louis A. Schwartz and E. B. McKinney for intervener supporting application.

C. M. Mulholland for intervener representing railway employees.

C. L. Mulholland, L. J. Hoppe, R. L. Hickman, and August B. Russo for other railway labor organizations, protestants.

Report of the Commission

Division 4, Commissioners Mahaffie, Miller, and Mitchell

By Division 4:

The city of New Orleans, La., the Chicago, St. Louis and New Orleans Railroad Company, the Gulf, Mobile and Ohio Railroad Company, the Illinois Central Railroad Company, the Louisiana & Arkansas Railway Company, the Louisville and Nashville Railroad Company, Guy A. Thompson, trustee in reorganization proceedings of the Missouri Pacific Railroad Company; debtor, the New Orleans and Northeastern Railroad Company, the New Orleans Terminal Company, the Texas and New Orleans Railroad Company, The Texas and Pacific Railway Company, and the Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans (a Louisiana corporation), hereinafter sometimes referred to, respectively, as the city, the Chicago company, the Gulf company, the Illinois Central, the Louisiana company, the Louisville & Nashville, the Missouri Pacific or the Missouri Pacific trustee, the Northeastern, the terminal company, the Texas company, the Texas & Pacific, and the TP-MP Railroad, on November 21, 1947, filed a joint application for (1) authority for the construction or acquisition of certain lines of railroad, and [fol. 12] permission for abandonment, or abandonment of operation, of certain lines of railroad; (2) authority under section 5 (2) of the Interstate Commerce Act, as amended, for joint use or ownership of certain lines of railroad, in Orleans and Jefferson Parishes, La., as more particularly described in the appendix to this report, incident to the construction and operation of a union passenger terminal in New Orleans, La.; and (3) authority for the issue by the city of $15,000,000 of City of New Orleans Union Passenger Terminal revenue bonds. The Railway Labor Executives' Association intervened. A hearing was held, at which the New Orleans Traffic and Transportation Bureau intervened in support of the application, and various railway labor organizations were represented. Briefs on the question of

protection to be accorded to carrier employees adversely affected by the applicants' proposals were filed. No representations have been made by State authorities, and no objection to granting the application has been presented. Service of an examiner's proposed report was waived.

Purpose of Proposals

New Orleans now has five principal stations, in scattered locations, used for railroad passenger business, and many of its streets and highways are crossed by railroad tracks at grade. The applicants' proposals are presented in furtherance of a project for a union passenger terminal to be used by all the railroads serving the city and, closely related thereto, for improvement of the city's highway and rail traffic situation by elimination of grade crossings through separation of grades, track and yard removal or relocation, closing of streets, and limitation of use of certain trackage. As the project has been planned, the abandonment of rail routes, rerouting of rail traffic, and coordination of railroad passenger facilities contemplated are necessary to permit the project to be executed successfully. If the program should fail of consummation, the city will have to take steps to accomplish similar results by other means.

The City and Certain Other Applicants

The city is a municipal corporation of the State of Louisiana that owns and operates, through the agency of the Public Belt Railroad Commission, a belt line railroad, and has heretofore been authorized by us to issue securities, *New Orleans Public Belt R. Bridge Bonds*, 189 I. C. C. 156.

The Chicago company is a wholly owned subsidiary of the Illinois Central, and its properties are leased to that company. The Southern Railway Company owns all the stock of the Northeastern and the terminal company. The Missouri Pacific owns all of the Texas & Pacific's noncumulative 5-percent preferred stock and a majority of its common stock, and the Missouri Pacific and the Texas & Pacific own, in equal shares, all of the stock of the TP-MP Railroad, a terminal switching carrier that handles all the passenger and freight traffic of the proprietary companies moving to, from or through New Orleans, as well as a substantial volume of switching for its own account.

New Orleans

New Orleans is an important seaport and the terminus of 7 trunkline railroads. Its corporate limits coincide with the boundaries of Orleans Parish, extending on both sides of the Mississippi River and embracing an area of about 365 square miles. The city has an urban population of between 550,000 and 575,000, and about 105,000 people reside in its suburbs.

Grade Crossings

The terminal and grades separation project is concerned principally with the major section of the city east of the river, which covers an area of about 345 square miles and contains about 95 percent of the city's population. Within [fol. 13] this area are located a total of approximately 334 miles of main, yard, and industrial railroad tracks. Exclusive of the area along the water front, there are at present 144 street and highway crossings at grade over railroad tracks in Orleans Parish. The Downman Road underpass, on the Northeastern, is the only structure now in operation east of the river having the sole function of separating railroad and vehicular traffic. A primary objective of the project is to eliminate as many railroad tracks as possible through the heart of the city by concentrating operations on a minimum number of lines. The removal of railroad tracks under the program will completely eliminate 33 grade crossings. Underpasses or overpasses are to be provided at 27 crossings, and 23 minor crossings are to be closed. However, 2 new grade crossings will be added, so that 63 crossings will remain, but in nearly all instances the railroad traffic thereover will be light and the interference with highway traffic will be negligible. The area east of the river is served by the freight and passenger trains of 8 trunk-line railroads.

Railroads

The three principal railroad approaches to the New Orleans are, from the east, the Northeastern, the Gulf company, which operates over the line of the Northeastern, and the Louisville & Nashville; from the west, the Illinois Central and the Louisiana company; and from the southwest, the Texas & Pacific, the Missouri Pacific, and the Texas company.

Two principal belt lines connect the railroads approaching from the east with those approaching from the west and southwest. These are the terminal company's outer belt, extending from East Bridge Junction to Port Chalmette, and the Public Belt Railroad, extending from West Bridge Junction, west of the river, across the Mississippi River Bridge and thence along the east bank river front and the upper side of the Industrial Canal, making direct interchange connections, with all New Orleans rail lines.

Passenger Stations

The five passenger stations within the city are the so-called Union Station, at South Rampart Street between Howard and Calliope Streets, owned by the Chicago company, and leased to the Illinois Central, which is used for the business of the Illinois Central and the Texas company; the Terminal Station, at Canal and Basin Streets, owned by the terminal company, and used for the business of the Northeastern and the Gulf company; the Louisville & Nashville's station, at the foot of Canal Street; the Louisiana company's station, at South Rampart and Girod Streets; and the TP-MP station, on Annunciation Street, between Melpomene and Thalia Streets, owned by the TP-MP Railroad, and used for the business of the Texas Pacific and the Missouri Pacific. Operation of some of these stations, of the stub-end type, is hampered by short station tracks or street crossings, and at others operation is difficult or inconvenient because the facility is inadequate for the present volume of traffic or other reasons. Distances between the stations, as much as 1.5 miles, cause difficulties and annoyance in the transfer of passengers, baggage, mail, and express. Practically no through-car service is operated. In addition to the above, two small suburban stations, located about three bocks apart on South Carrollton Avenue, on tracks of the Illinois Central, are used by that carrier and the Texas company.

The union passenger terminal project contemplates abandonment of use of the present passenger stations.

History of Project

The city has been endeavoring to secure improvement of its railroad terminal situation since 1882, and during the past 30 years much effort has been exerted in the prepara-

tion of engineering studies and reports, and in extensive [fol. 14] negotiations between public authorities and the railroads. Heretofore little progress has been made, due principally to inability of the city and the railroads to agree upon a comprehensive program of grade-crossing elimination and terminal development. Unfavorable natural conditions also have been a major factor. New Orleans is located on a strip of flat, low-lying land between the river and Lake Pontchartrain and, because only a few feet difference exists in ground surface elevations, any grade separation requires extremely long approaches. Drainage and adverse foundation conditions also complicate the problem and increase the costs involved.

Further studies and negotiations in 1938 and 1939 resulted in a program for a single union passenger terminal for all roads at North Carrollton Avenue and Bienville Street, and extensive grade-crossing elimination, to be financed under the provisions of Act 385 of 1938, of the Louisiana Legislature, with the assistance of the Public Works Administration, but emergency conditions preceding World War II prevented consummation of this plan.

Upon its adoption by the electorate at a general election on November 8, 1938, Act 385 became an amendment of the State constitution. Among other things this act authorized the city to construct and operate one or more passenger terminals and to require the railroads serving New Orleans to use such facilities to the exclusion of their present facilities, but provision was made for a voluntary contract among the interested parties, if such an agreement could be negotiated. The act contemplated and authorized an improvement in highway traffic conditions involving grade separations and other measures as an integrated part of the program, and authorized the city to issue $15,000,000 of revenue bonds and use the proceeds for the acquisition and construction of one or more passenger terminals and for defraying portions of the cost of grade separations. Provision was made for loans from the proceeds of the bonds to the several railroads for use in revision of their own facilities in connection with the project, and for the manner in which the bonds are to be secured. Authorization was granted for the vesting in a committee, to be comprised as stated below, of certain powers and functions in respect to the provision and operation of the contemplated facilities.

Before resumption of negotiations after termination of the war, a somewhat new plan was conceived which involved the use of New Basin Canal [1] and Shell Road, owned by the State, as means of access for the railroads to a particular site. Act 405 of 1946, adopted as an amendment to the State constitution on November 5, 1946, authorized a contract whereby necessary portions of this property could be conveyed to the city for use as a part of the proposed union passenger terminal. This amendment required that any contract carrying out such authorization should be entered into not later than December 1, 1947, but not before a contract providing for construction of a passenger terminal had been executed.

Terminal Agreement

An ordinance of the city adopted on June 5, 1945, provided for the establishment of a Terminal Board to represent the city in negotiating with the railroads for the purpose of seeking a satisfactory solution of the terminal and grade-crossings problem. On March 16, 1946, the Terminal Board submitted its report, and this became the basis of negotiations that resulted in an agreement, known as the terminal agreement, which was executed on October 22, 1947, by all the applicants and by the Public Belt Railroad Commission. [fol. 15] This agreement contemplates the construction of a union passenger station on the site of the present so-called Union Station between Howard and Calliope Streets. This building is to face South Rampart Street, but will sit back about 400 feet therefrom, providing ample space for parking motor vehicles. Convenient access to this site for the public generally is considered vital to the success of the project. The new station will have 2 stories, 1 for passenger facilities and the other for offices. The station is to have 12 stub-end tracks served by 6 rail-height platforms, of which 4 will be protected by butterfly sheds of 13 car lengths, and 2 will have similar protection of 18 car lengths and 9 car lengths, respectively. Separate buildings for

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[1] Constructed 117 years ago to afford light draft navigation from Lake Pontchartrain into New Orleans. It is located in the uptown portion of the city and has constituted a barrier to adequate traffic facilities to an area west of the canal that has developed as the city has grown.

handling baggage and mail, certain shops, and service and store buildings are to be constructed and operated as a part of the terminal. Switching of trains and cars within the terminal will be performed by five 660-horsepower Diesel switching engines.

The two small suburban stations of the Illinois Central will be replaced by a small station at Carrollton Avenue, to be built at a cost of $86,000.

The project contemplates the acquisition for the purpose of the union passenger terminal of a portion of the New Basin Canal and Shell Road, property of the Chicago company, and certain property of the Louisiana company, certain areas owned by third persons, and certain street areas. The terminal agreement makes special provision for limited use of the terminal facilities by the Illinois Central and the Louisiana company in connection with their freight operations.

Train Operation

It is proposed that all passenger trains of the Northeastern and the Gulf company enter over the outer belt from Peoples Avenue and the Louisville & Nashville from a point near Elysian Fields Avenue, to a point between Canal Boulevard and New Basin Canal, where they will turn into a new double-track main line along the east side of the canal right-of-way to Carrollton Avenue. A double-track connection is to be built in the general vicinity of Southport Junction immediately west of the Orleans Parish line, between the Illinois Central and the Louisiana company's line. Texas & Pacific and Missouri Pacific passenger trains will proceed over the Public Belt Railroad, as at present, to a connection with the Illinois Central at East Bridge Junction, thence over the Illinois Central to Southport, connecting into the new line at that point. Illinois Central and Texas company trains will continue over the Illinois Central to Southport, making connection with the new line. Louisiana company trains will operate as at present, connecting with the union passenger terminal approach immediately east of the Jefferson-Orleans Parish line. All passenger trains of the western carriers will then proceed over the present Louisiana company route, which will be rebuilt and double-tracked as a part of the union passenger terminal, along the Airline Highway and across the present

location of the New Basin Canal to Carrollton Avenue, at which point they will connect with the eastern approach. All passenger trains will then proceed over a three-track approach, on the present right-of-way of the Louisiana company immediately east of the New Basin Canal, to approximately Dorgenois Street, at which point they will cross the proposed new highway in New Basis Canal on a wye track, proceed beyond South Broad Avenue, and back into the station. On out-bound movement, trains will proceed directly outward, crossing to the east side of the New Basin Canal right-of-way and proposed new highway at Dorgenois Street. The eastern lines' trains will proceed outward along the east bank of the canal to the outer belt. The western lines' trains will proceed along the Airline Highway to Jefferson Parish and thence to their respective lines.

Cost

It is now estimated that the total cost of the project, including the cost of street improvements, will be about $37,000,000. The cost of the union passenger terminal is estimated at about $15,765,000, divided as follows: Station [fol. 16] building proper, $1,800,000; land and property acquisition, together with damages to property, $3,321,000; track work, signal installation, equipment, facilities, and buildings, engineering and miscellaneous expense, $9,507,000; and payment of 15 percent of the cost of grade-separation structures within the terminal, $1,137,000. The 15 percent of the cost of grade-separation structures outside of the terminal, payable from the proceeds of the bonds, is estimated at $1,643,000. Also, $600,000 is to be advanced to the terminal company to enable it to double track part of its line, install certain signals, and do certain track work, made necessary by the changes incident to the primary purposes of the project.

The financing of the project, exclusive of the city's portion of grade-separation costs and its purchase of property for general purposes, is to be accomplished for the most part by the issue and sale of the proposed bonds. The proceeds of these bonds are to be available to pay the cost of constructing the union passenger terminal, to pay a part of the cost of grade separations as provided in the terminal agreement, and to provide the loan of $600,000 to the terminal company. Repayment of this loan, with in-

terest, will be included in the amounts available for interest and principal payments on the bonds.

The total of the sums above shown to be payable from the proceeds of the bonds is approximately $18,000,000, or $3,000,000, more than the total par value of the proposed bonds. Under the terminal agreement the railroad companies will be liable to pay this deficiency as prepaid additional rental. The remainder of the $37,000,000, or about $18,900,000, will be borne by the city with some assistance from other governmental agencies. The city has obligated itself to pay 85 percent of the grade separation program within and without the terminal proper.

The total cost is exclusive of certain additional costs to certain of the applicants, as the cost to the city of providing the Louisville & Nashville with a new route in exchange for property of that carrier in Elysian Fields Avenue desired by the city for highway purposes, the cost to the Illinois Central of relocating some of its displaced facilities, and the cost to the Northeastern of rearranging its Press Street yard.

Union Passenger Terminal

The proposed new terminal will be constructed and will be owned by the city, and will be operated for the city by the committee mentioned above, as a separate unincorporated entity to be known as the New Orleans Union Passenger Terminal. As such it will have its own employees, will keep its operations, accounts, and employment relationships separate and distinct from those of the Public Belt Railroad Commission and the railroad applicants, and will make its own separate reports to public authorities.

By the provisions of the terminal agreement, supervision and control of the acquisition, construction, maintenance, and operation of the terminal is vested in the committee, except that the Public Belt Railroad Commission has authority in certain particulars involving the station buildings proper, as specified in the agreement. The act of 1938 provided for the contingency that the city might act through the Public Belt Railroad Commission in many aspects of the project, with the proviso that certain functions might be vested instead in the committee. When exercising any right or power conferred by the act or performing any obligation imposed by the terminal agreement, the commission is indemnified by provisions of the agreement. Among

the undertakings of the commission are the making of a loan to the terminal company from the proceeds of the proposed bonds, and participation in the cost of construction and operation of a grade-separation structure. The committee consists of representatives of the city, (members of the Terminal Board of the Public Belt Railroad Commission) and representatives of the several railroads, and the terminal agreement provides for the manner in which they shall vote in determining the actions of the committee. The immediate operating head of the terminal will be the terminal manager, appointed by and reporting to the terminal committee.

[fol. 17]

Right of Use

The railroad signatories to the terminal agreement, and potentially any others that hereafter may serve New Orleans, by the agreement are granted the right to use [2] the terminal during an initial term of 50 years from the completion date,[3] with provision for extensions up to 50 years in addition, and the city undertakes to require, to the extent it lawfully may, use of the facilities on reasonable terms by any such railroad company, except that in the case of the Louisiana Southern Railway Company and the New Orleans & Lower Coast Railroad Company such power need not be exercised. It is estimated that the project can be completed in 4 or 5 years.

Rental

Under the agreement, the carriers have obligated themselves to pay as normal rent for use of the terminal, on a user basis, (1) the cost of maintaining and operating the terminal, and (2) interest on and serial maturities of the

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[2] Latent in the case of the Chicago company, a lessor company, and the terminal company, which is engaged principally in the movement of freight.

[3] Defined in the agreement as the date upon which the chief engineer, with the approval of the committee, shall certify that the terminal is sufficiently completed to be ready for use, and that the other facilities to be constructed under the agreement are sufficiently completed to permit the carriers to use the terminal without substantial interference with their operations.

proposed bonds, until January 1, 1998. Under Act 385, the terminal is to be exempt from ad valorem taxes. After the date mentioned, the carriers, in addition to paying all costs of maintenance and operation, are to pay to the city a net normal rental in an amount equal to what the ad valorem taxes would be on the terminal, on the basis of its fair value at that time as agreed upon by the city and the committee.

Other Provisions of Agreement

To the extent available, the bond proceeds will be applied ratably to all purposes they are intended to cover. Each carrier then will pay an equitable proportion of the prepaid additional rental required based on its use of each zone of the terminal and each grade separation and on the amount of prepaid rental allocated to each of such units. The normal rental for use of the publicly owned facilities prior to January 1, 1998, will be distributed among the carriers on the basis of the amount of bond proceeds expended on each terminal zone and grade separation on the same user basis, but normal rental applicable to grade separations on lines of an individual carrier will be paid entirely by it. All cost of maintenance and operation is to be paid by the carriers in each zone on a user basis, and each carrier is to pay for any special services chargeable to it.

No compensation is to be paid to members of the Terminal Board, the committee, or the Public Belt Railroad Commission, but the city is to be reimbursed for certain preliminary legal and engineering expenses. Working capital, in an amount not exceeding $300,000, will be advanced by the carriers on or before the completion date on the basis of specified percentages. If any additions and betterments to the terminal are needed, the city agrees to provide them and the carriers agree to furnish, as additional prepaid additional rental, sums sufficient to pay therefor. Proceeds from any retirements and sales of union terminal property are to be credited against normal rentals.

[fol. 18]

Bonds

The proposed bonds which will mature serially in varying amounts over a period of years, from January 1, 1953, through January 1, 1989, with a last maturity on January 1, 1998, will be offered for sale through competitive bidding,

but as the bonds have not as yet been so offered, the rate or rates of interest and other particulars have not yet been determined. Therefore, action with respect to the issue of bonds must necessarily be deferred.

Joint Tracks

With certain exceptions, tracks to be used jointly are included in the union passenger terminal, and compensation for such use is included in the normal rental payable under the terminal agreement.

As previously indicated, the Illinois Central and the Louisiana company are to have the right to use certain tracks of the union terminal in limited freight services. Under the terminal agreement, in consideration of the break in continuity of the lines of these parties which will result from construction of the terminal, certain tracks are to be constructed, without cost to them, for their joint and equal ownership. Under date of February 26, 1948, the Illinois Central and the Louisiana company entered into an agreement defining the use, operation, and maintenance of these tracks and certain other tracks owned solely by each of the parties for the purpose of handling its freight and switching business. The connecting track, together with use of facilities granted by the Louisiana company, will provide the means of access by the Illinois Central to its Poydras yard. The contract contains extensive provisions as to maintenance, renewal and repair, reciprocal grants of rights of use of facilities, by the Illinois Central to the Louisiana company, liability, arbitration of disputes and other matters, and provides that it shall become effective currently with construction of the facilities for which it provides, but the parties will be governed by applicable provisions thereof during the construction period.

In the terminal agreement, the terminal company agrees to enter into agreements with those carriers which are to use the union passenger terminal, providing that such carriers shall have the right to use such portions of the outer belt, for passenger service only, as may be necessary for them to reach the union passenger terminal. Such agreements are to become effective upon the expiration of present agreements which permit use of such facilities for passenger service and to remain in effect during the remainder

of the 50-year term of the terminal agreement, with the privilege of extending such use for further periods as the terminal agreement may be extended. In the event that the present agreement with the Gulf company for passenger service should terminate for any reason prior to January 1, 1953, it is agreed that until that date, that carrier will be permitted to use the outer belt, for passenger service, to reach the connection with the union terminal, upon the same terms and conditions as other users until January 1, 1953, and thereafter will be permitted such use upon the same terms as to valuation and other matters as other users for passenger service.

For the purpose of the terminal agreement, for the use of the outer belt after December 31, 1952, for passenger service it is understood that the base valuation to be used for rental is to be fixed by arriving at the cost of reproduction new, less depreciation, as of the date mentioned, but this base valuation is to be adjusted from time to time for subsequent net additions and betterments, and such original or adjusted valuation is to be subject to review at the end of each 10-year period during the life of the agreement for passenger service at the request of any party to an agreement dated May 17, 1909, between the terminal company and other parties. The interest rate upon the valuation is to be the interest rate provided in that agreement, namely, 5 percent annually.

[fol. 19] By an agreement dated March 17, 1948, the Northeastern grants to the Louisville & Nashville the right of joint use of (a) a track, partly in existence and in part to be constructed, from North Claiborne Street to Dauphine Street, (b) a track from Dauphine Street to Almonaster Avenue, (c) a track, existing and to be constructed from Dauphine Street to Mandeville Street, and (d) two cross-over tracks to be constructed in Peters Street that will connect (b) and (c); and the Louisville & Nashville grants to the Northeastern the right of joint use of a portion of the former's track extending from the present end of (c) to another connection.

The Louisville & Nashville agrees to construct a single track from the connection with its main line near the crossing of the Northeastern's main tracks at Peoples Avenue southward to a point of junction with that carrier's track described in (a), and the Northeastern agrees to grant a permanent easement for such portions of the new track as

may extend over and on its land or rights-of-way, for an agreed consideration of $18,152. But, if requested by the Northeastern, the Louisville & Nashville will relocate eastwardly a portion of this track, in which event, the Northeastern is to grant a right-of-way through its property for such relocation, and the Northeastern is to remove a storage track in order to permit construction of the Louisville & Nashville track. The Louisville & Nashville is not to have the right to switch any industries now or hereafter located on or adjacent to the tracks to be jointly used with the Northeastern or the track to be built by it.

The agreement contains further provisions as to construction and maintenance of crossings, details of operation, track maintenance, and use of the joint tracks by the terminal company as nominee of the Northeastern.

The Louisville & Nashville is obligated to pay to the Northeastern, on the date when it begins operation over the joint tracks, the sum of $21,276, or one-half of the agreed valuation, $42,552, of the tracks and facilities to be jointly used, excepting a portion of the track (a), of which the cost is to be assumed by the city, the cross-overs described in (d), and a designated portion of (c), and to pay, during the life of the agreement, one-half of the expense incurred by the Northeastern for maintenance and operation of such tracks and facilities, including a portion of track (a), and of the ad valorem taxes upon that property. In the computation of maintenance and operating expenses and charges, direct labor costs are to be increased by applicable pay-roll and similar taxes and allowances, and 10 per cent of labor charges for general supervision; and invoice prices of materials and supplies are to be increased by the applicable sales and other taxes, together with 15 percent of such prices for foreign-line freight charges on all materials and supplies, except ballast and coal. In the case of ballast, 60 cents a cubic yard is to be added to cover storage, inspection, accounting, and other expense; and freight at tariff rates is to be added in the case of coal. Other provision is made as to equipment used in connection with the work and assessments for public improvements, and for the deduction of 15 percent from the salvage credit value of material released to cover accounting, handling, and transportation. Depreciation is not to be included, and charges for maintenance and operation are to be credited with amounts collected by the Northeastern from third persons for rentals

or concessions granted in connection with the jointly used property.

The agreement contains other provisions as to equal sharing of the cost of additions and betterments and assessments for public improvements; but, if and when the overhead bridge at North Galvez Street is built, the Louisville & Nashville is to pay one-sixteenth of the railroad proportion of the entire structure, with approaches and land damage, estimated at $5,620, and the Northeastern is to pay fifteen-sixteenths or $84,300 on the basis of the number of tracks, respectively, which they have at that location. [fol. 20] Provision is also made as to adjustment between the parties of loss and damage claims, but the Northeastern is not to be answerable to the Louisville & Nashville, in any event, for service delay, interference, or interruption by damage or destruction of the jointly used facilities.

The effectiveness of the agreement is made contingent upon the terminal agreement becoming effective. The agreement is to become effective when the Louisville & Nashville begins use of the property and to continue in effect until terminated by mutual agreement, but the Louisville & Nashville may terminate it on 30 days' notice, if it discontinues operation over the facilities with the approval and consent of public authority having jurisdiction in the premises. Provision is also made for termination of the agreement by default. In the event of termination thereof by default or otherwise, the Louisville & Nashville agrees to remove its tracks and facilities from the property of the Northeastern and thereupon the easement for its tracks shall be extinguished, but the Louisville & Nashville will convey to the Northeastern a portion of its track (c) between specified points.

The Illinois Central and the Chicago company, its lessor, have entered into substantially similar agreements with the Texas & Pacific, Missouri Pacific trustee, and TP-MP Railroad, and with the Texas company covering use of its tracks between East Bridge Junction and Southport. The agreement with the Missouri Pacific group is dated November 15, 1947, and is to take effect when the union passenger terminal is completed and placed in operation, and to remain in effect for an initial period of 50 years. It grants the right of joint use, for operation of passenger equipment, of the Illinois Central's Southward main track between East Bridge Junction and the connection with the track of the

union terminal at Southport and northward main track between the connection with the main track of the terminal company at Shrewsbury and the above-mentioned connection at Southport, together with a cross-over track. As rental the grantees agree to pay a car-user proportion of 5 percent annually on agreed valuations, based on cost of reproduction new, less depreciation, of the jointly used tracks, and they agree to pay their user share of the expense of maintenance and operation, and taxes, computed as provided in the agreement. The agreement contains further provisions as to changes in the jointly used tracks, apportionment of special assessments, control of operation, liability, arbitration, default, and other matters usually included in such contracts. The grantees' use of the cross-over track is to be governed by a previous agreement dated May 15, 1937, whereby use of that facility was granted to others until July 1, 1953, but if use of the facility under that agreement should terminate for any reason, the grantees' use thereof is to continue subject to applicable provisions of the new agreement. The agreement with the Texas company is dated February 2, 1948. It contains similar provisions as to the contract dated May 15, 1937, mentioned above, but cancels an agreement dated December 18, 1902, under which the Texas company now uses the Illinois Central's tracks and facilities between East Bridge Junction and the Illinois Central's passenger station at New Orleans.

Public Interest

The union passenger terminal and grade-crossing elimination project will be mutually advantageous to the city and to the railroads serving New Orleans. The city will acquire valuable property from which it will receive a net rental equal to the ad valorem taxes on the facilities after rentals have paid the cost of construction, it will be benefited by substantial lessening of traffic hazards and expediting of highway traffic, its development will be facilitated and potential residential areas improved, and it will be able to effect these benefits at a cost less than it might otherwise have to bear.

The project is attractive to the railroads because their proportionate contribution to grade-separation costs is on a reasonable basis. The number of crossings requiring such separation is materially reduced, and they are relieved of

the burden of having to provide their part of such costs [fol. 21] from their own funds at one time, since their part of the costs is to be defrayed initially from the proposed bonds. They are also relieved from the necessity of considerable expenditures in the near future for their privately owned passenger station facilities.

Fixed Charges

We find that increase in total fixed charges resulting from the transactions herein within the scope of section 5 (2) of the act would not be contrary to the public interest. The transactions do not contemplate any guaranty or assumption of payment of dividends or fixed charges.

Employees

The total number of employees on the New Orleans lines that probably would be affected by the contemplated changes in operations has been estimated by a committee of transportation officers, on the basis of present day conditions, at 1,022, and the number required to operate and maintain the union passenger terminal has been estimated at 680. As provided in the terminal agreement, so far as feasible the terminal manager will recruit the necessary personnel from supervisory and other employees displaced at the 5 separate stations to be abandoned on completion of the union passenger terminal. The estimates indicate a net displacement of about 350 employees, of whom 9 are bridge tenders and about 108 are crossing watchmen now employed on tracks which will be retired or over which train and yard movements will be reduced; but the opinion is expressed that the number eventually displaced will not exceed 300.

The terminal agreement provides that, after the personnel of the union terminal has been recruited, all displaced employees shall receive compensation, if any is due, in the manner and to the extent that may be ordered by us; and further provides for defraying any costs of compensation of displaced employees as a proratable operating cost of the terminal except in the case of crossing watchmen, whose compensation, if any, is to be borne by the employing railroad.

The applicants do not deny, except as noted below, that some protection of employees adversely affected by the coordination of facilities and operations involved in the proj-

ect, is proper in the premises; but they disagree with the intervener representing employees as to the extent, in time, of the protection to be afforded and as to the classes of employees entitled to receive such protection. The intervener contends that whatever protection is afforded by us should continue for a period of at least 4 years from the time employees are adversely affected, and that such protection should extend to all employees so affected. These issues arise, as to the period of protection, from the applicants' estimate that physical consummation of the project will require 4 or 5 years and, as to the classes of employees to be included, from the applicants' contention that crossing watchmen and bridge tenders should not be included because such employees will lose their employment, not because of coordination of facilities and operation, but because of elimination of grade crossings, or as a result of filling in New Basin Canal, in the exercise of the city's police power.

The intervener takes the position that the applicants' proposals are for a coordination of carrier facilities within the meaning of the Washington Job Protection Agreement, and that employees adversely affected thereby are entitled to the protective measures specified in that agreement as a matter of contract right. These are questions within the jurisdiction of a private tribunal set up by the agreement, and the employees contemplate the institution of a proceeding before that body to determine whether those affected by the coordination are protected by the agreement. This is mentioned in order to make clear that the intervener's participation in this proceeding is not to be construed as a waiver of rights or in prejudice of any claim of right under [fol. 22] the agreement; and the intervener feels that it may here ask, with propriety, that a "protective floor" be established for employees pursuit to the provisions of section 5 (2) (f) of the Interstate Commerce Act and the discretion thereby vested in us.

The provision of the statute to which the intervener refers is as follows:

> As a condition of its approval, under this paragraph (2), of any transaction involving a carrier or carriers by railroad subject to the provisions of this part, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall

include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this Act, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees.

The intervener observes that it has been our practice to impose, in determinations under section 5 (2), the conditions prescribed by us in *Chicago & N. W. Ry. Co. Merger*, 261 I. C. C. 672. Those conditions follow the language of the second sentence of section 5 (2) (f) and now are imposed uniformly (1) in cases where it is definitely shown that no employees would be affected, and (2) in cases in which it is not definitely shown that employees would not be affected. The intervener states that such conditions are unsatisfactory in this case, contending that, inasmuch as the applicants' proposals will require 4 or 5 years for completion after any order of approval is issued, limitation of the protective period to 4 years from the effective date of the order would effectively nullify such conditions, as such period would expire before employees were affected.

Incidentally the intervener refers to testimony to the effect that, because of increased business, the railroads have added a substantial number of employees to their pay rolls in recent years, that any displaced employees will be those at the bottom of seniority lists and will have less basis for claims for protection than employees having longer period of service, and that it was the older employees which section 5 (2) (f) is intended to protect; and points out that the final clause in the second sentence of that provision shows the intention of Congress to provide protection for employees having less than 4 years of service. Furthermore, the

intervener urges, it is possible that business may decline and decreases in personnel occur so that, when the applicants' proposals are completed, the employees affected may be those having long employment with the railroads. Admittedly it is impossible at this time to determine the employees who will be released from service or otherwise affected adversely when the project is completed, although by comparison of seniority lists and the number of jobs affected, an employee could obtain some idea whether his employment would be placed in jeopardy, assuming no change in general conditions.

The intervener urges that the intention of section 5 (2) (f) is to provide a period of readjustment for employees adversely affected, and that no such period is afforded by merely serving notice now that a specified number of employees, without any identification, will be no longer needed 4 or 5 years hence. It therefore maintains that the purpose of the statute can be served only by dating any protective measures from the time when adverse effects of the project on employees become manifest, and that its proposal that employees receive protection for 4 years after completion [fol. 23] of the project and after the date of adverse effect on them is not contrary to the provisions of section 5 (2) (f), which, the intervener submits, establishes the minimum, and not the maximum, period of protection.

In this connection the intervener refers to our determination in *Chicago, M., St. P. & P. R. Co. Trustees Construction,* 257 I.C.C. 292, wherein the Commission denied a petition for extension of the date of commencement of the protective period for adversely affected employees, saying

> • • • Section 5 (2) (f) prescribed a definite period of protection, namely, "four years from the effective date of such order." In our opinion, we have no authority to prescribe any other period in a case arising under section 5 (2).

The intervener contends that conclusion should be reconsidered, pointing out that in *Chicago, R. I. & G. Ry. Co. Trustees Lease,* 230 I.C.C. 181 and 233 I.C.C. 21, decided prior to the enactment of section 5 (2) (f), we approved and authorized a lease subject to certain conditions for the protection of employees, with the period of protection to run

from the time when operation under the lease was to begin.[4] It argues that, while section 5 (2) (f) makes employee protection mandatory, rather than discretionary, as before, there was no intention thereby to decrease the measure of protection theretofore available.

Finally, the intervener undertakes to distinguish, in scope, the general directive in the first sentecnce of section 5 (2) (f) from the specification, in the following sentence, of the terms and conditions which we are to include in our orders under section 5 (2), contending that the general directive and the specification of terms and conditions are of equal weight, and that if the specification is considered as fixing the maximum period of protection, the general provision is nullified. It urges that an arrangement cannot be considered fair and equitable protection to employees when its effect would be to deprive them of all protection.

The railroad applicants anticipate that, insofar as appropriate, we will follow our practice of prescribing conditions for the protection of employees in cases under section 5 (2) in which it is not possible to determine at the time of our decision whether any employees will be affected, as in *Chicago & N. W. Ry. Co. Merger, supra;* but urge the propriety of following the pattern of the conditions prescribed in *Chicago, B. & Q. R. Co. Abandonment,* 257 I.C.C. 700, in setting out in detail not only the rights and responsibilities of employees, but also the rights of the railroads, rather than the more general conditions prescribed in the determination first mentioned. They urge that the employing carriers are entitled to all such equitable protection as is afforded in the so-called Burlington conditions, because the project is a development compelled by the power of public authority in the public interest, and is not dictated by expediency in the hope of profit.

As to the extent to which employee protection should be afforded either under section 5 (2) (f) or under section 1 (20) of the act, the railroad applicants submit that it is wholly inappropriate to include crossing watchmen or bridge tenders for the reasons above indicated. They ask that we find that the loss of employment by those employees will not be the result of coordination of rail facilities and

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[4] Sustained in *United States* v. *Lowden,* 308 U. S. 225, decided December 4, 1939.

operations, but of the highway traffic improvement program engrafted on the union terminal project. But the interveners point out that the project is presented as an inseparable unit, that a general rerouting of railroad traffic is proposed, that by this means traffic over existing grade crossings will be eliminated or lessened, that the plan involves elimination of the crossing watchmen's jobs, and that, inasmuch as the plan is to be consummated by coordination of railroad facilities and operation, employee protection under section 5 (2) (f) is required. We imposed conditions under [fol. 24] section 5 (2) (f) for the protection of employees adversely affected by a proposed abandonment, because abandonment and construction were component parts of an inseparable plan of operation, in *Texas & P. Ry. Co. Operation*, 247 I.C.C. 285.

Our authority to impose conditions for the protection of employees in abandonment proceedings is discretionary, but imposition of such conditions in proceedings under section 5 (2) is mandatory. In this proceeding the proposals to abandon and the proposals within the scope of section 5 (2) are inseparable parts of a general plan for coordination of operation. Accordingly, we think that the conditions to be imposed by us herein should conform to the requirements of section 5 (2) (f).

As the record shows definitely that employees will be affected adversely by the applicants' proposals, it is appropriate in this case that we require a fair and equitable arrangement to protect the interests of employees so affected. We think that the benefit of such an arrangement necessarily must extend to all the railroad employees affected by exercise of the authorizations herein granted. But we also think that the fair and equitable arrangement contemplated by section 5 (2) (f) is measured by the specification therein of a protective period of 4 years from the effective date of our order approving a transaction within the scope of section 5 (2). As was decided in *Chicago, M., St. P. & P. R. Co. Trustees Construction, supra*, we have no authority to prescribe any other period.

We are of opinion that a fair and equitable arrangement for protecting the interests of employees adversely affected by the applicants' proposals here will be provided by conditions similar to conditions (4) to (9), inclusive, imposed by us in *Oklahoma Ry. Co. Trustees Abandonment*, 257 I.C.C.

177 (197-201) which are similar to those prescribed in *Chicago, B. & Q. R. Co., abandonment, supra,* and our approval and authorization herein will be granted subject to those conditions.

We find that the present and future public convenience and necessity require construction of lines of railroad and acquisition of lines of railroad, and permit abandonment, or abandonment of operation, of lines of railroad, in Orleans and Jefferson Parishes, La., by the city of New Orleans, La., the Chicago, St. Louis and New Orleans Railroad Company, the Gulf, Mobile and Ohio Railroad Company, the Illinois Central Railroad Company, the Louisiana & Arkansas Railway Company, the Louisville and Nashville Railroad Company, the New Orleans and Northeastern Railroad Company, the New Orleans Terminal Company, and the Texas and New Orleans Railroad Company, as described in the appendix to this report; and, subject to the conditions for the protection of employees referred to herein, that acquisition of the right of joint use or joint ownership of line of railroad, described in said appendix, by the Gulf, Mobile and Ohio Railroad Company, the Illinois Central Railroad Company, the Louisiana & Arkansas Railway Company, the Louisville and Nashville Railroad Company, Guy A. Thompson, trustee of the Missouri Pacific Railroad Company, the New Orleans and Northeastern Railroad Company, the Texas and New Orleans Railroad Company, The Texas and Pacific Railway Company, and the Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans is, in each instance, a transaction within the scope of section 5 (2) of the Interstate Commerce Act, that the terms and conditions proposed are just and reasonable, and that the transactions will be consistent with the public interest.

An appropriate certificate and order will be entered, effective from and after 40 days from its date, requiring that the construction authorized shall be commenced on or before December 31, 1948, and completed on or before December 31, 1953, and providing that none of the lines or operations herein permitted to be abandoned, may be abandoned until operation is substituted over lines herein authorized to be constructed or jointly used. Suitable provision will be made therein for the cancellation of tariffs. Our determinations herein contemplate that before recording on its books the related journal entries to show retirement of lines from

service, each applicant therein granted permission to abandon first shall submit the entries for our approval.

[fol. 25] APPENDIX

Specific authorization sought

I. Under Section 1 (18) of the Interstate Commerce Act.

A. To construct lines of railroad—

1. By the city. (a) A double track commencing in the vicinity of East City switch on the line of the terminal company, known as the outer belt at Woodlawn Place to the junction with the western connection of the union passenger terminal in the vicinity of South Carrollton Avenue, a distance of approximately 8,800 feet. (b) A double track from the vicinity of Southport Junction on the Illinois Central to the connection of said tracks with the present Louisiana & Arkansas main-line track in the vicinity of the Orleans-Jefferson Parish line between Forshey and Olive Streets adjoining the Airline Highway, a distance of approximately 3,500 feet on one track and approximately 2,700 feet on the other.[5] (c) Three tracks from the junction of the eastern and western approaches of the union passenger terminal near Solomon Street in the vicinity of Carrollton Avenue to the vicinity of South Dorgenois Street, a distance of approximately 6,400 feet. (d) A double-track loop track from South Dorgenois Street to a connection with the Illinois Central's track near South Gayoso Street, a distance of approximately 3,400 feet. (e) A single track (in-bound main line) from said loop track in the vicinity of South Dorgenois Street to connection with the station throat in the vicinity of South Claiborne Avenue, a distance of approximately 3,400 feet. (f) A single track (out-bound main line) from the station throat in the vicinity of South Claiborne Avenue to South Dorgenois Street, a distance of approximately 3,400 feet. (g) A track from a point in the existing main-line tracks of the Louisville & Nashville, approximately 3,440 feet southwesterly from milepost 802, and

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[5] Difference in length of tracks is due to the distance between the Illinois Central main tracks at Southport Junction.

approximately 350 feet northeasterly from the crossing of said Louisville & Nashville tracks and the main tracks of the Northeastern near Peoples Avenue, thence in a southerly direction to a point approximately 80 feet north of the north line of North Claiborne Street, a distance of approximately 8,880 feet.[6] (h) Approximately 80 feet of the track between Mandeville Street and Esplanade Avenue, which is to be acquired by the Louisville & Nashville.[7]

2. By the Louisiana company. Approximately 1,500 feet of new main-line track at a point near the Orleans-Jefferson Parish line.

3. By the Louisville & Nashville. Main-line tracks extending from a point in its existing main tracks approximately 2,696 feet southerly from milepost 803, thence in a southwestwardly direction to connections with the terminal company's tracks known as the outer belt, a distance of approximately 1,112 feet.

B. To acquire lines of railroad—

1. By the city. The single main-line track of the Louisiana company from a point near Livingstone Street to a connection near Carrollton Avenue with the tracks to be constructed by the union passenger terminal, a distance of approximately 5,200 feet.[8]

[fol. 26] 2. By the Louisville & Nashville. (a) A main track from a point in its existing main tracks, approximately 3,440 feet southwesterly from milepost 802, and approximately 350 feet northeasterly from the crossing of said existing main-line tracks and main tracks of the Northeastern near Peoples Avenue, thence in a southerly direction to a point approximately 80 feet north of the north line of North Claiborne Street, a distance of approximately 8,880 feet.[9] (b) A main track extending from a point between Mandeville and Marigny Streets to a connection with the Louis-

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[6] This track will be acquired, and be used exclusively, by the Louisville & Nashville.

[7] See I, B, 2, (b).

[8] To be abandoned by the Louisiana company. See I, C. 3.

[9] To be acquired from the city.

ville & Nashville's existing main track at or near Esplanade Avenue, a distance of approximately 850 feet.[10]

C. To abandon lines of railroad—

1. By the Chicago company. Main-line tracks from milepost 910.77 to milepost 912.18.

2. By the Illinois Central. Main-line tracks from milepost 451.92 to milepost 454.52.[11]

3. By the Louisiana company. Main-line tracks from a point near the Orleans-Jefferson Parish line to the south side of Carrollton Avenue, approximately 6,150 feet.[12]

4. By the Louisville & Nashville. Main-line tracks beginning at a point in existing main tracks approximately 2,696 feet southwesterly from milepost 803 and extending in a southwesterly direction to Elysian Fields Avenue, thence in a southerly direction in Elysian Fields Avenue to the foot of Esplanade Avenue, a distance of approximately 9,896 feet.

5. By the terminal Company. Double-track main tracks from the present passenger station of the terminal company on Canal Street to a point near Toulouse Street, a distance of approximately 1,200 feet.[13]

D. To abandon operation of lines of railroad—

1. By the Gulf company. Double-track main-line track of the terminal company from the East City Switch on the line of that company known as the outer belt at Woodlawn Place

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[10] Approximately 770 feet of this track belongs to the Texas company and is used by it as a way switching track; approximately 80 feet will be acquired from the city.

[11] It is proposed to remove the track from milepost 452.22 to milepost 452.83 and from milepost 454.31 to milepost 454.42, and to retain the remainder of the track to be abandoned for use as a switching and industrial track.

[12] To be sold to the city.

[13] Abandonment and sales of the station will render continuance of this track unnecessary.

to the present passenger station of the terminal company at Canal Street, a distance of approximately 19,357 feet.[14]

2. By the Illinois Central. Main tracks of the Chicago company from milepost 910.77 to milepost 912.18.

3. By the Louisiana company. Main-line tracks described in I, C, 3.

4. By the Louisville & Nashville. Main-line tracks described in I, C, 4.

5. By the Northeastern. Main-line tracks described in I, D, 1.

[fol. 27] 6. By the terminal company. Main-line track described above in I. C, 5.

7. By the Texas company. Double track of the Illinois Central from Southport, at which point the union passenger terminal tracks will connect with each of the two tracks of the Illinois Central to the present passenger station of the Illinois Central at Rampart Street, a distance of approximately 18,000 feet.[15]

II. Under section 5 (2) of the Interstate Commerce Act.

A. To acquire the right jointly to use lines owned by others—

1. By the Gulf company. (a) Double-track main-line tracks from the East City switch on the line of the terminal company known as the outer belt at Woodlawn Place to the junction of the western lines at Carrollton Avenue, a distance of approximately 8,800 feet;[16] thence (b) three main tracks to a point near South Broad Street, a distance of approximately 5,800 feet;[17] thence (c) a single track

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[14] In lieu thereof the Gulf company's passenger trains will operate into the new Union Passenger Terminal over track described below. See II, A, 1, (a).

[15] In lieu thereof, the Texas company's passenger trains will operate into the new union passenger terminal over tracks described below. See II, A, 7 (a).

[16] Jointly with the Northeastern and the Louisville & Nashville.

[17] Jointly with all the other railroads.

around a loop to the connection of the city's union passenger terminal tracks with the Illinois Central's tracks near South Gayoso Street, then to a connection with the station tracks of the union passenger terminal at Claiborne Avenue, a distance of approximately 7,100 feet.[17] (d) A single main track from the throat of the station tracks of the union passenger terminal to a connection at South Broad Street with the three main tracks described in (b) above, a distance of approximately 3,850 feet.[17]

2. By the Illinois Central. The tracks of the union passenger terminal from Southport Junction to the new station building.

3. By the Louisiana company. Tracks owned by the city extending from a point near the Jefferson-Orleans Parish line to a point south of Claiborne Avenue, chaining station 167 to chaining station 0 plus 00.

4. By the Louisville & Nashville. (a) Main tracks of the terminal company known as the outer belt extending from a point of connection of tracks to be constructed by the Louisville & Nashville to a point near Woodlawn Place, being the point of connection of the union passenger terminal tracks with the outer belt, a distance of approximately 18,575 feet.[18] (b) Main tracks of the city extending from a point of connection with main tracks of the terminal company near Woodlawn Place in a southerly and southeastern direction to the union passenger terminal, a distance of approximately 21,000 feet.[19] (c) Main tracks of the city extending from a point in main tracks at or near South Broad Street, thence, by loop, in a southerly and southwesterly direction to a connection with union passenger terminal tracks, near South Broad Street, a distance of approximately 1,450 feet, thence in a northwesterly direction to end of union passenger terminal tracks and a connection with Illinois Central tracks, near Gayoso Street, a distance of approximately 1,850 feet, and from the connection, at or near South Broad Street, in a southeasterly direction to a connection with the union passenger tracks, a distance of approximately 3,500 feet.[19] (d) A main track

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[18] To be used jointly with the Northeastern and the Gulf company.

[19] To be used jointly with other railroad applicants.

extending from a point approximately 80 feet north of the north line of North Claiborne Street to a point approximately 85 feet north of the north line of Marais Street, a distance of approximately 1,570 feet.[20] (e) A main track extending from a point 85 feet north of the north line of [fol. 28] Marais Street to a point 130 feet south of the south line of Dauphine Street, a distance of approximately 1,800 feet.[21] (f) A main track extending from a point 130 feet south of the south line of Dauphine Street to a point in or near Almonaster Avenue, where said track connects with the track of the Texas company, a distance of approximately 1,900 feet.[22] (g) A main track extending from a point near Almonaster Avenue, being the end of the track described above (f), to a point in the Louisville & Nashville's existing main track at or near Esplanade Avenue, a distance of approximately 1,540 feet.[23] (h) A main track extending from a point 130 feet south of the south line of Dauphine Street to a point between Mandeville and Marigny Streets, a distance of approximately 2,590 feet.[24]

5. By the Missouri Pacific. (a) The double main track of the Illinois Central from a connection between the New Orleans Public Belt track with the southward main track of the Illinois Central at East Bridge Junction to a connection between said main tracks of the Illinois Central and the tracks of the New Orleans union passenger terminal, when constructed, at or near Southport, a distance of approximately 2.18 miles. (b) The New Orleans union passenger terminal tracks from the point of connection with the main tracks of the Illinois Central at or near Southport to the union passenger station, when constructed, near the present location of the Illinois Central passenger sta-

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[20] To be constructed by the city, owned by the Northeastern and used by it jointly with the Louisville & Nashville.

[21] Owned by the Northeastern and to be used by it jointly with the Louisville & Nashville.

[22] Owned by the Northeastern and to be used jointly by it, the Texas company, and the Louisville & Nashville.

[23] Owned by the Texas company and to be used jointly by it, the Northeastern, and the Louisville & Nashville.

[24] Owned by the Northeastern and to be used jointly by it, the Texas company, and the Louisville & Nashville.

tion at Loyola and Calliope Streets, a distance of approximately 3.92 miles.

6. By the Northeastern. (a) Double track from the East City switch on the line of the terminal company known as the outer belt at Woodlawn Place to the junction at the western lines at Carrollton Avenue, a distance of approximately 8,800 feet;[25] thence (b) three main tracks to a point near South Broad Street, a distance of approximately 5,800 feet;[26] thence (c) a double track around a loop to the connection of the city's union passenger terminal tracks with the Illinois Central's track near South Gayoso Street, then to a connection with the station tracks of the union passenger terminal at Claiborne Avenue, a distance of approximately 7,100 feet.[26] (d) A single main track from the throat of the station tracks of the union passenger terminal to a connection at South Broad Street with the three main tracks referred to in (b) above, a distance of approximately 3,850 feet.[26]

7. By the Texas company. (a) A double track from Southport (junction with Illinois Central Railroad) to the junction of the eastern lines at Carrollton Avenue, a distance of approximately 8,900 feet;[27] thence (b) three main tracks to a point near South Dorgenois Street, a distance of approximately 6,400 feet;[26] thence (c) a double track around a loop to the connection of the city's union passenger terminal tracks with the Illinois Central's track near South Gayoso Street, then to a connection with the station tracks of the union passenger terminal at Claiborne Avenue, a distance of approximately 6,800 feet.[26] (d) A single main track from the throat of the station tracks of the union passenger terminal to a connection at South Dorgenois Street with the three main tracks mentioned above (b), a distance of approximately 3,400 feet.[26]

[fol. 29] 8. By the Texas & Pacific. (a) Double main track of the Illinois Central from a connection between

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[25] To be used jointly with the Gulf company and the Louisville & Nashville.

[26] To be used jointly with all the other railroad applicants.

[27] To be used jointly with the Illinois Central, Louisiana company, and Missouri Pacific.

the New Orleans Public Belt track with the southward main track of the Illinois Central at East Bridge Junction to a connection between said main tracks of the Illinois Central and the tracks of the union passenger terminal, when constructed, at or near Southport, a distance of approximately 2.18 miles. (b) Union passenger terminal tracks from the point of connection with the main tracks of the Illinois Central at or near Southport to the union passenger station, when constructed, near the present location of the Illinois Central passenger station at Loyola and Calliope Streets, a distance of approximately 3.92 miles.

9. By the TP-MP Railroad. Same tracks described in II, A, 8, (a) and (b).

B. To acquire joint ownership—

1. By the Illinois Central and the Louisiana company. A track to be constructed by the union passenger terminal from a connection with the tracks of the union passenger terminal at South Dupre Street to a connection with the Illinois Central Poydras yard lead at White Street, a distance of approximately 500 feet.

Certificate and Order

At a session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 7th day of April, A. D. 1948.

Finance Docket No. 15920

New Orleans Union Passenger Terminal Case

Investigation of the matters and things involved in this proceeding having been made, a hearing having been held, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is hereby certified, That the present and future public convenience and necessity (a) require construction of lines of railroad, and acquisition of lines of railroad, by the City of New Orleans, Louisiana, the Louisiana & Arkansas Rail-

way Company, and the Louisville and Nashville Railroad Company, in Orleans and Jefferson Parishes, La., as described in the appendix to said report: *Provided, however,* and this authorization is granted upon the express condition, that construction of said lines of railroad shall be commenced on or before December 31, 1948, and be completed on or before December 31, 1953; and (b) permit abandonment, or abandonment of operation, of lines of railroad by the Chicago, St. Louis and New Orleans Railroad Company, the Gulf, Mobile and Ohio Railroad Company, the Illinois Central Railroad Company, the Louisiana & Arkansas Railway Company, the Louisville and Nashville Railroad Company, the New Orleans and Northeastern Railroad Company, the New Orleans Terminal Company, and the Texas and New Orleans Railroad Company, in Orleans and Jefferson Parishes, La., as described in the appendix to said report; *Provided, however,* and this certificate is issued upon the condition, that none of the lines or operations herein permitted to be abandoned may be abandoned until operation is substituted over lines herein authorized to be constructed, acquired, or jointly used or owned.

It is ordered, That, subject to the conditions for the protection of employees specified in said report, acquisition of joint use, or joint ownership, of lines of railroad, as described in the appendix to said report, by the Gulf, Mobile and Ohio Railroad Company, the Illinois Central Railroad [fol. 30] Company, the Louisiana & Arkansas Railway Company, the Louisville and Nashville Railroad Company, Guy A. Thompson, trustee of the Missouri Pacific Railroad Company, the New Orleans and Northeastern Railroad Company, the Texas and New Orleans Railroad Company, The Texas and Pacific Railway Company, and the Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans, upon the terms and conditions in said report found just and reasonable, be, and it is hereby, approved and authorized.

It is further ordered, That the carriers herein authorized to construct lines of railroad shall report to this Commission in writing the commencement and completion of said lines of railroad within 15 days after such commencement and completion, respectively.

It is further ordered, That tariffs applicable to the lines of railroad or operation herein permitted to be abandoned, may be canceled upon notice to this Commission and to

the general public by not less than 10 days filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act.

It is further ordered, That the carriers, when filing schedules establishing fares and charges applicable on said lines of railroad herein authorized to be constructed, acquired, or jointly used or owned, or canceling tariffs applicable on said lines of railroad permitted to be abandoned, or operation of which is permitted to be abandoned, shall in such schedules refer to this certificate and order by title, date, and docket number.

It is further ordered, That said carriers shall report to this Commission as required by valuation order No. 24, effective May 15, 1928.

And it is further ordered, That this certificate and order shall take effect and be in force from and after 40 days from its date.

By the Commission, division 4.

W. P. Bartel, Secretary. (Seal)

[fol. 31] EXHIBIT "B" TO COMPLAINT

[Conditions 4 to 9, inclusive, taken from 257 I.C.C. 177, 197-201]

4. If, as a result of the abandonment of operation herein permitted and the purchases et cetera, herein authorized, hereinafter referred to as the transaction, any employee of Robert K. Johnston and A. C. DeBolt, trustees of the Oklahoma Railway Company, of The Atchison, Topeka and Santa Fe Railway Company, or of Joseph B. Fleming and Aaron Colnon, trustees of The Chicago, Rock Island and Pacific Railway Company, hereinafter respectively referred to as the Oklahoma, the Santa Fe, and the Rock Island, and collectively as the carriers, is displaced, that is, placed in a worse position with respect to his compensation and rules governing his work conditions, and so long thereafter as he is unable, in the exercise of his seniority rights under existing agreements, rules, and practice, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall be paid a monthly

displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the monthly compensation received by him in the position from which he was displaced. The latter compensation is to be determined by dividing separately by 12 the total compensation received by the employee and the total time for which he was paid during the last 12 months in which he performed services immediately preceding the date of his displacement as a result of this transaction (thereby producing average monthly compensation and average monthly time paid for in the test period). If his compensation in his retained position in any month is less than the aforesaid average compensation in the test period, he shall be paid the difference, less compensation at the rate of the position from which he was displaced for time lost on account of his voluntary absences in his retained or current position, but if in his retained position he works in any month in excess of the average monthly time paid for in the test period, he shall be compensated for the excess time at the rate of pay of the retained position; provided, however, that nothing herein shall operate to affect in any respect the retirement on pension or annuity rights and privileges in respect of any employee; provided, further, that if any employee elects not to exercise his seniority rights he shall be entitled to no allowance, and provided, further, that no allowance shall be paid to any Oklahoma employee who fails to accept employment, with seniority rights in Oklahoma City, Okla., with the Santa Fe or Rock Island if either of said two last-named carriers offers him a position, the duties of which he is qualified to perform. The period during which this protection is to be given, hereinafter called the protective period, shall extend from the date on which the employee was displaced to the expiration of 4 years from the effective date of our order herein; provided, however, that such protection shall not continue for a longer period following the effective date of our order herein than the period during which such employee was in the employ of the carriers prior to the effective date of our order.

5. If, as a result of the transaction herein approved, any employee, hereinafter referred to as a dismissed employee, of the carriers is deprived of employment with said car-

riers because of the abolition of his position or the loss thereof as the result of the exercise of seniority rights by an employee whose position is abolished as result of the transaction herein approved, he shall be accorded a monthly dismissal allowance equivalent to one-twelfth of the compensation received by him in the last 12 months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of this transaction. This allowance shall be made during the protective period to each dismissed employee while unemployed, provided, however, that no such allowance shall be paid to any Oklahoma employee who fails to accept employment, with seniority rights in Oklahoma City, Okla., with the Santa Fe or Rock Island, if either of said two last-named carriers offers him a position, the duties of which he is qualified to perform.

[fol. 32] The dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his representative, and the carriers, should agree upon a procedure by which the carriers shall be currently informed of the wages earned by such employee in employment other than with the carriers, and the benefits received.

The dismissal allowance shall cease prior to the expiration of the protective period in the event of the failure of the employee without good cause to return to service after being notified by the carriers of a position, the duties of which he is qualified to perform and for which he is eligible, or in the event of his resignation, death, retirement on pension, or dismissal for good cause.

6. No employee affected by the transaction approved herein shall be deprived during the protective period of benefits attached to his previous employment, such as free transportation, pensions, hospitalization, relief, et cetera, under the same conditions and so long as such benefits continue to be accorded to other employees on his home road, in active service or on furlough, as the case may be, to the extent that such benefits can be so maintained under present

authority of law or corporate action or through future authorization which may be obtained.

7. Any employee retained in the services of the carriers involved in the transaction herein approved, or who is later restored to service after being entitled to receive a dismissal allowance, and required to change the point of his employment as a result of the transaction, and within the protective period is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects, for the traveling expenses of himself and his immediate family, and for his own actual wage loss, not to exceed 2 days, the exact extent of the responsibility of the carriers to be agreed upon in advance by the said carriers and the employees affected; provided, however, that changes in place of residence, subsequent to the initial change caused by the transaction, which result from the exercise by the employee of his seniority rights shall not be considered as within the foregoing provision.

8. In the event that any dispute or controversy arises with respect to the protection afforded by the foregoing Conditions Nos. 4, 5, 6, and 7, which cannot be settled by the carriers and the employee, or his authorized representatives, within 30 days after the controversy arises, it may be referred, by either party, to an arbitration committee for consideration and determination, the formation of which committee, its duties, procedure, expenses, et cetera, shall be agreed upon by the carriers and the employee, or his duly authorized representatives.

9. (a) The following condition shall apply, to the extent it is applicable in each instance, to any employee who is retained in the service of any of the carriers (or who is later restored to service after being entitled to receive a dismissal allowance), who is required to change the point of his employment within the protective period as a result of the transaction herein approved and is therefore required to move his place of residence:

1. If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by his employing carrier for any loss suffered in the sale of his home for less than its fair value.

In each case the fair value of the home in question shall be determined as of a date sufficiently prior to May 17, 1943, to be unaffected by the filing of the applications herein. The employing carrier shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other person.

[fol. 33] 2. If the employee is under a contract to purchase his home, the employing carrier shall protect him against loss to the extent of the fair value of any equity he may have in the home and in addition shall relieve him from any further obligation under his contract.

3. If the employee holds an unexpired lease of a dwelling occupied by him as his home, the employing carrier shall protect him from all loss and cost in securing the cancelation of his said lease.

(b) Changes in place of residence subsequent to the initial change caused by the consummation of the transaction herein approved and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this condition.

(c) No claim for loss shall be paid under the provisions of this condition which is not presented within 1 year after the date employee is required to move.

(d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of lease, or any other question in connection with these matters, it shall be decided through joint conference between the representatives of the employees and the carrier on whose line the controversy arises and in the event they are unable to agree, the dispute may be referred by either part to a board of three competent real estate appraisers, selected in the following manner: One to be selected by the representatives of the employees and the carrier, respectively, and these two shall endeavor by agreement within 10 days after their appointment to select the third appraiser, or to select some person authorized to name the third appraiser. A decision of a majority of the appraisers shall be required and said decision shall be final and con-

clusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party."

[fol. 34] EXHIBIT "C" TO COMPLAINT

Before the Interstate Commerce Commission

Finance Docket No. 15920

PETITION

Filed Nov. 10, 1948

(1) City of New Orleans, Louisiana,
(2) Chicago, St. Louis and New Orleans Railroad Company,
(3) Gulf, Mobile and Ohio Railroad Company,
(4) Illinois Central Railroad Company,
(5) Louisiana & Arkansas Railway Company,
(6) Louisville and Nashville Railroad Company,
(7) Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, Debtor,
(8) New Orleans and Northeastern Railroad Company,
(9) New Orleans Terminal Company,
(10) Texas and New Orleans Railroad Company,
(11) The Texas and Pacific Railway Company, and
(12) Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans, for authority to construct or acquire certain lines of railroad, to use certain lines of railroad, to abandon certain lines of railroad, and for the City to issue and sell certain bonds, incident to the construction and operation of a Union Passenger Terminal in the City of New Orleans, Louisiana.

Henry G. McCall, Michel Provosty, Francis P. Burns, Robert E. Quirk, Harry McCall, Lucien M. Abbot, Henry L. Walker, Attorneys for Applicants.

November 10, 1948.

[fol. 35] To the Interstate Commerce Commission:

Come now the applicants in the above entitled proceeding, and by this Supplemental Application show as follows:

1. By its original order in this proceeding entered April 7, 1948, the Commission authorized the construction of lines of railroad sought by the applicants in this proceeding, subject to the following condition:

> "*Provided, however,* and this authorization is granted upon the express condition, that construction of said lines of railroad shall be commenced on or before December 31, 1948, and be completed on or before December 31, 1953;".

2. By its Supplemental Order entered May 6, 1948, the Commission authorized the City of New Orleans, one of the [fol. 36] applicants herein, to issue not exceeding $15,000,000 of City of New Orleans Union Passenger Terminal revenue bonds upon the terms and conditions stated in said Supplemental Order.

3. Under date of July 7, 1948, counsel for the applicants addressed a letter to the Commission advising that by reason of certain litigation then pending which involved the validity of many features of the Union Passenger Terminal project, it had been impossible to consummate the sale of the bonds. The suit referred to in the second paragraph of that letter has now been decided in favor of the validity of the terminal project by the Circuit Court of Appeals for the Fifth Circuit, by its order entered October 25, 1948, but the time for applying for a writ of certiorari in the Supreme Court of the United States has not yet expired. The City is therefore not able at this time to go forward with sale of the bonds, which is a prerequisite of the construction of the terminal.

4. As soon as it is possible to do so, the City proposes to sell the bonds, subject to approval of such sale by the Commission, and all the applicants propose to proceed with the project. However, it is not believed that this can be accomplished prior to December 31, 1948. Applicants believe they may reasonably need another year in which to dispose of the pending litigation, sell the bonds, and commence construction of the terminal.

Wherefore, applicants respectfully pray that the Commission enter a fourth supplemental order herein extending the time for commencement of construction of the lines of railroad authorized in this proceeding to December 31, 1949, and extending the time for completion of said lines to December 31, 1954.

Henry G. McCall, Michel Provosty, Francis P. Burns, Robert E. Quirk, Harry McCall, Lucien M. Abbot, Henry L. Walker, Attorneys for Applicants, P. O. Box 1808, Washington 13, D. C.

Certificate of Service

I hereby certify that copies of the foregoing application have this day been served on attorneys for all parties of record by mailing copies thereof properly addressed to such attorneys.

Henry L. Walker, Attorney for Applicants.

Washington, D. C., November 10, 1948.

[fol. 37] EXHIBIT "D" TO COMPLAINT

Interstate Commerce Commission

Order

Finance Docket No. 15920

New Orleans Union Passenger Terminal Case

Present: Charles D. Mahaffie, Commissioner, to whom the above-mentioned matter has been assigned for action thereon.

It appearing, That by certificate and order entered in the above-entitled proceeding, under date of April 7, 1948, the Commission, by division 4, among other things, authorized the construction of certain lines of railroad by the City of New Orleans, Louisiana, et al., upon condition, among others, that said construction be commenced on or before December 31, 1948, and completed on or before December 31, 1953;

It further appearing, That, for good cause shown, the applicants herein will be unable to commence or to complete

the construction of the lines of railroad within the time prescribed and have filed a request that the time for commencement of such construction and the completion thereof be extended respectively to December 31, 1949, and December 31, 1954;

It is ordered, That the time within which the applicants herein shall commence the construction authorized be, and it is hereby, extended to December 31, 1949, and the time for completion thereof extended to December 31, 1954.

Dated at Washington, D. C., on this 22nd day of November, A. D. 1948.

By the Commission, Commissioner Mahaffie.

W. P. Bartel, Secretary. (Seal.)

[fol. 38] EXHIBIT "E" TO COMPLAINT

Third Supplemental Order

At a General Session of the Interstate Commerce Commission, Held at its Office in Washington, D. C., on the 6th Day of July, A. D. 1948

Finance Docket No. 15920

New Orleans Union Passenger Terminal Case

It appearing, That, by report, certificate, and order dated April 7, 1948, effective 40 days from its date, the Commission, by Division 4, in the above-entitled proceeding, authorized the City of New Orleans, the Chicago, St. Louis and New Orleans Railway Company, and other carriers serving New Orleans, Louisiana, to construct and acquire lines of railroad, to abandon, or abandon operation of lines of railroad, and to jointly use or jointly own lines of railroad in Orleans and Jefferson Parishes, Louisiana, as therein described, all incident to the construction and operation of a union passenger terminal in New Orleans, upon conditions, among others, providing for the protection of carrier employees for a period of 4 years from the effective date of said certificate and order;

It further appearing, That by supplemental report and order dated May 6, 1948, the Commission, by Division 4, authorized the City of New Orleans to issue and sell not

exceeding $15,000,000 of New Orleans Union Passenger Terminal revenue bonds, such authority to become effective on the effective date of the authorizations granted in the certificate and order of April 7, 1948;

It further appearing, That the Railway Labor Executives' Association filed a petition requesting that the Commission reopen the proceeding solely for the purpose of reconsidering the time limit prescribed for the protection of carrier employees in the above-mentioned report of April 7, 1948;

It further appearing, That by order of the Commission, by Division 4, dated May 13, 1948, the said proceeding was reopened solely for the purpose of permitting reconsideration by the Commission of the questions raised and contentions made by said petitioner;

It further appearing, That the applicants filed a reply to the said petition;

And it further appearing, That the Commission has considered the record herein, the questions raised and the contentions made by the petitioner and the applicants, and has reached the conclusion that there has been presented no evidence of error of fact or law as to the said time limit prescribed for the protection of employees;

It is ordered, That said petition of The Railway Labor Executives' Association for reconsideration be, and it is, hereby, denied.

By the Commission.

(Seal) W. P. Bartel, Secretary.

[fol. 39] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION FOR DESIGNATION OF A DISTRICT COURT OF THREE JUDGES—Filed February 16, 1949

The above entitled action being required by Section 2325 of Title 28, United States Code to be heard and de-

termined by a district court of three judges, plaintiff respectfully moves that the Chief Judge of the United States Court of Appeals for the District of Columbia Circuit be so notified by the district judge to whom the complaint in this action is presented and requested to designate a district court of three judges, pursuant to the provisions of Section 2284 of Title 28, United States Code, to hear and determine the action.

Frank L. Mulholland, Clarence M. Mulholland, Willard H. McEwen, 741 Nicholas Building, Toledo 4, Ohio; Edward J. Hickey, Jr., 620 Tower Building, Washington 5, D. C., Attorneys for plaintiff.

Of Counsel: Mulholland, Robie, McEwen & Hickey, 620 Tower Building, Washington 5, D. C.

[fol. 40] *Certification of Service*

I hereby certify that the foregoing motion has been duly served upon the defendant herein by mailing a copy thereof by registered mail on February 16, 1949, to the Attorney General of the United States, Department of Justice, Washington, D. C., and to the United States Attorney for the District of Columbia. A copy has also been personally served upon counsel for the Interstate Commerce Commission.

Edward J. Hickey, Jr., 620 Tower Building, Washington, D. C., Attorney for Plaintiff.

February 16, 1949.

[fol. 41] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ANSWER OF THE UNITED STATES OF AMERICA—Filed March 30, 1949

Now comes the United States of America, defendant in the above-entitled action, and in response to the complaint filed herein answers and says:

1. Defendant admits that this Court has jurisdiction over the subject matter of this action and the parties thereto.

2. Defendant admits that the Interstate Commerce Commission duly made its report and order of April 7, 1948 (Exhibit A to complaint), assailed in part in the present action, authorizing certain new construction, abandonment, and acquisition of lines of railroad, in connection with the construction of a new passenger station at New Orleans, Louisiana; and admits that plaintiff's petition for reconsideration of said order (Exhibit E to complaint) was denied on July 6, 1948.

3. Defendant admits that in its said order the Commission imposed certain conditions for the protection of employees, and restricted the duration of such protection to a period of 4 years from the effective date of said order.

[fol. 42] 4. Defendant denies that said order is invalid for the reasons set forth by plaintiff, or for any reason, and alleges that said order was, as the Commission found, in exact accordance with the Commission's power as delineated and specified in the second sentence of Section 5(2)(f) of the Interstate Commerce Act (49 U. S. C. 5 (2)(f)). Defendant alleges that the circumstance that the terminal will not be completed until after 5 years, while the protective period of 4 years will thus have elapsed before the impact upon the employees of the adverse effect resulting from the transactions approved by the Commission, is a circumstance regarding which the employees and carriers are free to make a voluntary agreement pursuant to the last sentence of Section 5(2)(f) of the act but regarding which the Commission has no power under existing law to impose requirements having longer duration than that specified in the second sentence of Section 5 (2)(f) of the act.

5. Except as hereinabove expressly admitted, defendant denies each and every allegation in the complaint contained to the extent of any inconsistency with the Commission's report of April 7, 1948, to which the Court is respectfully referred for a full and complete account of the facts involved in this litigation.

Wherefore, defendant prays that the relief prayed for by plaintiff be denied and the complaint dismissed.

Edward Dumbauld, William D. McFarlane, Special Assistants to the Attorney General, Department of Justice, Washington 25, D. C.

Herbert A. Bergson, Assistant Attorney General. George Morris Fay, United States Attorney.

[fol. 43] I certify that a copy of the foregoing answer was this day mailed to the following persons:

Edward J. Hickey, Jr., Esq., 620 Tower Building, Washington 5, D. C.; Daniel W. Knowlton, Esq., Interstate Commerce Commission, Washington 25, D. C.

This 23rd day of March, 1949.

Edward Dumbauld, Special Assistant to the Attorney General.

[fol. 44] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION FOR LEAVE TO INTERVENE AS DEFENDANTS—Filed April 1, 1949

[fol. 45] The City of New Orleans, Louisiana, a municipal corporation, Chicago, St. Louis and New Orleans Railroad Company, a corporation, Gulf, Mobile and Ohio Railroad Company, a corporation, Illinois Central Railroad Company, a corporation, Louisiana and Arkansas Railway Company, a corporation, Louisville and Nashville Railroad Company, a corporation, Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, Debtor, New Orleans and Northeastern Railroad Company, a corporation, New Orleans Terminal Company, a corporation, Texas and New Orleans Railroad Company, a corporation, The Texas and Pacific Railway Company, a corporation, and Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans, a corporation, pursuant to Rule 24 (a) (1) of the Rules of Civil Procedure, move for leave to intervene as defendants in this action in order to assert defenses set forth in the proposed pleading and answer, a copy of which is attached hereto. In support of this motion, the said corporations and each of them allege that:

1. Each of said applicants, City of New Orleans, Louisiana, Chicago, St. Louis and New Orleans Railroad Com-

pany, Gulf, Mobile and Ohio Railroad Company, Illinois Central Railroad Company, Louisiana and Arkansas Railway Company, Louisville and Nashville Railroad Company, Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, Debtor, New Orleans and Northeastern Railroad Company, New Orleans Terminal Company, Texas and New Orleans Railroad Company, The Texas and Pacific Railway Company, and Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans is a common carrier by rail serving New Orleans, Louisiana.

2. Plaintiff, the Railway Labor Executives' Association, prays in its complaint that the order of the Interstate Commerce Commission, entered in the proceeding known as *New Orleans Union Passenger Terminal Case*, Finance Docket No. 15920, be set aside, enjoined and annulled, in part.

[fol. 46] 3. The proceeding before the Interstate Commerce Commission referred to in paragraph 2 hereof was instituted by the applicants for intervention for the purpose of securing necessary authority under the Interstate Commerce Act, for rearrangement of tracks and the financing incident to the construction of Union Passenger Terminal in the City of New Orleans.

4. This suit involves the validity of the order of the Interstate Commerce Commission referred to in paragraph 2 hereof, and the interests of these applicants for intervention may be adversely affected by any order or judgment entered in this action.

5. Section 2323 of Title 28, United States Code, confers on these applicants for intervention an unconditional right to intervene in this action.

Henry B. Curtis, City Hall, New Orleans 7, La.; Harry McCall, 724 Whitney Building, New Orleans, Louisiana; D. C. Fitch, Jr., 1025 Elm Street, Dallas 2, Texas; Henry L. Walker, W. S. Macgill, Southern Railway Building, 15th & K Sts., N. W., Washington 5, D. C., Attorneys for Applicants for Intervention.

To: Railway Labor Executives' Association, Plaintiff:

To: United States of America, Defendant:

Please take notice that the undersigned will bring the [fol. 47] above motions for hearing before the Court at a time, day and place set by the Court.

Henry B. Curtis, Harry McCall, D. C. Fitch, Jr., Henry L. Walker, W. S. Macgill, Attorneys for Applicants for Intervention.

Dated: April 1, 1949.

NOTICE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Intervene as Defendants and the accompanying Intervenors' Answer to Complaint were mailed, postage prepaid, to Edward J. Hickey, Jr., counsel for plaintiff, 620 Tower Building, Washington 5, D. C.; to the Attorney General of the United States, attention of Edward Dumbauld and William D. McFarland, Special Assistants to the Attorney General, attorneys for the defendant United States of America, Department of Justice, Washington 25, D. C.; and to Daniel W. Knowlton, Chief Counsel for the Interstate Commerce Commission, Interstate Commerce Commission, Washington 25, D. C., on the 1st day of April 1949.

W. S. Macgill.

[fol. 48] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[Title omitted]

RAILROAD INTERVENORS' ANSWER TO COMPLAINT

Now come the City of New Orleans, Louisiana, Chicago, St. Louis and New Orleans Railroad Company, Gulf, Mobile and Ohio Railroad Company, Illinois Central Railroad Company, Louisiana and Arkansas Railway Company, Louisville and Nashville Railroad Company, Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, Debtor, New Orleans and Northeastern Railroad Company, New Orleans

Terminal Company, Texas and New Orleans Railroad Company, The Texas and Pacific Railway Company, and Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans, referred to hereafter as the "railroad intervenors" and answer the complaint as follows:

First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

[fol. 49] Second Defense

Railroad intervenors answer the specific allegations of the complaint as follows (the paragraphs of this Defense are numbered to correspond with the paragraph numbers in the complaint):

1-13. Railroad intervenors admit the allegations of Paragraphs 1 through 13 of the complaint.

14. Railroad intervenors admit the allegations of Paragraph 14 except that (a) they deny the soundness of the contention of plaintiff stated in the third sentence and (b) they further aver that the litigation referred to in the fifth sentence has now been terminated and the bonds have now been issued and the proceeds are in hand to finance the construction authorized by the Commission's order.

In further answer to the allegations of Paragraph 14 of the complaint, railroad inervenors allege that the protective period of four years provided in the conditions pertaining to employees adversely affected does provide adequate and real protection to any and all employees who may be affected by the consummation of the projects as authorized by the Commission, all as required and provided by Section 5 (2) (f) of the Interstate Commerce Act.

15. Railroad intervenors deny the allegations of Paragraph 15 of the complaint except that (a) they admit that plaintiff did make the alleged contention in its petition for reconsideration by the full Commission and (b) they admit the allegations of the last sentence of Paragraph 15 of the complaint.

16. Railroad intervenors admit the allegations of Paragraph 16 of the complaint.

17. Railroad intervenors deny the allegations of Paragraph 17 of the complaint.

18. Railroad intervenors deny the allegations of Paragraph 18 of the complaint.

[fol. 50] 19. Railroad intervenors deny the allegations of the first sentence of Paragraph 19 of the complaint, but admit the allegations of the second and third sentences of Paragraph 19 of the complaint.

Wherefore, railroad intervenors respectfully pray that the complaint be dismissed.

Henry B. Curtis, City Hall, New Orleans 7, La.; Harry McCall, 724 Whitney Building, New Orleans, Louisiana; D. C. Fitch, Jr., 1025 Elm Street, Dallas 2, Texas; Henry L. Walker, W. S. Macgill, Southern Railway Building, 15th & K Streets, N. W., Washington 5, D. C., Attorneys for Intervenors.

Dated: April 1, 1949.

[fol. 51] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[Title omitted]

INTERVENTION OF INTERSTATE COMMERCE COMMISSION—Filed April 2, 1949

To the Honorable the Judges of Said Court:

In accordance with the provisions of Section 2323, Title 28, U. S. Code, we hereby enter the appearance of the Interstate Commerce Commission as a party defendant, and of ourselves as its counsel, in the above-entitled suit.

Daniel W. Knowlton, Chief Counsel; Edward M. Reidy, Assistant Chief Counsel, for Interstate Commerce Commission.

[fol. 52] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed April 2, 1949

The Interstate Commerce Commission, intervening defendant in the above-entitled action, hereinafter referred to as the Commission, for answer to the bill of complaint, answers and says:

I

Answering the allegations of paragraphs 1 to 6, inclusive, of the complaint, the Commission admits the allegations thereof.

II

Answering the allegations of paragraph 7 of the complaint, the Commission admits the same except that it refers the court to its report of April 7, 1948, 267 I. C. C. 763, attached to and made a part of the complaint as Exhibit A, for a more full and complete statement of the proceedings than is contained in said paragraph 7.

III

Answering the allegations of paragraph 8 of the complaint, the Commission admits the same.

[fol. 53] IV

Answering the allegations of paragraphs 9 and 10 of the complaint, the Commission admits the same, except that it refers the court to its report of April 7, 1948, and its supplemental report of May 6, 1948, for a more full and complete statement of its findings and conclusions than is contained in said paragraphs.

V

Answering the allegations of paragraphs 11 and 12 of the complaint, the Commission admits that it made, in substance, the findings summarized in said paragraphs, but alleges in

his connection that the reasons and subsidiary findings sup-orting its ultimate conclusions are more fully discussed in ts report, Exhibit A to the complaint, to which the Commis-ion respectfully refers the court.

VI

Answering the allegations of paragraph 13 of the com-laint, the Commission admits the same.

VII

Answering the allegations of paragraphs 14 and 15 of the omplaint, the Commission refers the court to plaintiff's etition for reconsideration and modification, therein re-erred to, for a complete statement as to plaintiff's con-entions.

Further answering the allegations of paragraph 14 of the omplaint, the Commission is informed and believes that he litigation referred to in the fifth sentence of said para-raph has now been terminated and the bonds referred to n said paragraph have now been issued and the proceeds re in the hands of railroad intervenors to finance the con-truction authorized by the Commission's order. The Com-nission further alleges that the protective period of four fol. 54] years provided in the conditions pertaining to em-loyees adversely affected does provide adequate and real rotection to any and all employees who may be affected by he consummation of the projects as authorized by the Com-nission, as required by section 5 (2) (f) of the Interstate Commerce Act, and the Commission denies the allegations o the contrary contained in said paragraph.

With further reference to the allegations contained in aragraph 15 of the complaint, the Commission admits that ection 5 (2) (f) is correctly quoted in said paragraph, and dmits that plaintiff made the contentions therein set forth n its petition for reconsid..ation and modification. Such ontentions were answered in the Commission's report, Exhibit A to the bill of complaint, to which reference is ereby made.

VIII

Answering the allegations of paragraph 16 of the com-laint, the Commission admits the same, but alleges in this

connection that it reached the conclusion that the petition for reconsideration should be denied, after consideration of said petition and the entire record in the proceeding, and upon consideration of replies to said petition filed by railroad intervenors.

IX

Answering the allegations of paragraphs 17 and 18 of the complaint, the Commission denies the same.

X

Answering the allegations of paragraph 19 of the complaint, the Commission admits that the plaintiff has fully pursued its administrative remedy before the Commission and that this court has jurisdiction. The Commission denies the other allegations of this paragraph.

[fol. 55] Further answering the allegations of the complaint, the Commission alleges that in the hearings held on the application referred to in paragraph 7 of the bill of complaint, the Commission considered testimony and other evidence submitted on behalf of the plaintiff herein by counsel for said plaintiff; that at said hearings and subsequently, in briefs filed in said proceedings, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including questions raised by plaintiff in this action, whereupon the Commission determined said matters and entered and duly served upon the plaintiff herein, and upon other interested parties, its report and certificate, Exhibit A to the bill of complaint.

The Commission further alleges that the findings and conclusions in said report were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceeding as aforesaid.

The Commission further alleges that in making said report it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties in said proceeding by their respective counsel, including matters covered by the allegations of the bill of complaint herein.

Answering the allegations of the bill of complaint, the Commission denies that in issuing its report and certificate

hereinbefore referred to, it exceeded its statutory power or acted arbitrarily, unreasonably or erroneously in any respect. The Commission denies that its said report and certificate are invalid for the reasons set out in said bill of complaint, or for any other reason.

[fol. 56] Further answering the allegations of the bill of complaint, the Commission denies that plaintiff will suffer irreparable injury as a result of the Commission's decision in this proceeding.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the bill of complaint, insofar as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report and certificate, hereinbefore referred to.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said bill of complaint be dismissed.

Interstate Commerce Commission by Daniel W. Knowlton, Chief Counsel, Edward M. Reidy, Assistant Chief Counsel.

[fol. 57] *Duly sworn to by Charles D. Mahaffie. Jurat omitted in printing.*

[fol. 58] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[Title omitted]

DESIGNATION OF JUDGES TO SERVE ON THREE JUDGE DISTRICT COURT—Filed April 8, 1949

The Honorable David A. Pine, United States District Judge for the District of Columbia, having notified me that the plaintiff in the above entitled action has presented to him an application to set aside and annul, in part, an order of the Interstate Commerce Commission, now, therefore, pursuant to the provisions of Section 2284 of Title 28, United States Code, I hereby designate the Honorable Bennett C. Clark, United States Circuit Judge for the District

of Columbia Circuit, and the Honorable Jennings Bailey, United States District Judge for the District of Columbia, to serve with the Honorable David A. Pine, United States District Judge, as members of a district court to hear and determine this action.

Dated April 7, 1949.

Harold M. Stephens, Chief Judge, United States Court of Appeals for the District of Columbia Circuit.

[fol. 59] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER GRANTING LEAVE TO INTERVENE AS DEFENDANTS—Filed April 12, 1949

This cause was heard on the motion of City of New Orleans, Louisiana, Chicago, St. Louis and New Orleans Railroad Company, Gulf, Mobile and Ohio Railroad Company, Illinois Central Railroad Company, Louisiana and Arkansas Railway Company, Louisville and Nashville Railroad Company, Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, Debtor, New Orleans and Northeastern Railroad Company, New Orleans Terminal Company, Texas and New Orleans Railroad Company, The Texas and Pacific Railway Company, and Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans pursuant to Rule 24 (a) (1) of the Rules of Civil Procedure, for leave to intervene as defendants herein and the Court having considered the motion and being advised in the premises, it is

Ordered that City of New Orleans, Louisiana, Chicago, St. Louis and New Orleans Railroad Company, Gulf, Mobile and Ohio Railroad Company, Illinois Central Railroad Company, Louisiana and Arkansas Railroad Company, Louisville and Nashville Railroad Company, Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, Debtor, New Orleans and Northeastern Railroad Company, New Orleans Terminal Company, Texas and New Orleans Rail-

road Company, The Texas and Pacific Railway Company, and Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans be and they hereby are granted leave to intervene herein as defendants.

Bennett C. Clark. Jennings Bailey. David A. Pine.

Dated: This 12th day of April, 1949.

[fol. 60] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION OF PLAINTIFF, RAILWAY LABOR EXECUTIVES' ASSOCIATION, FOR SUMMARY JUDGMENT—Filed April 21, 1949

Now comes the plaintiff, Railway Labor Executives' Association, through its attorneys and moves the Court to grant summary judgment for the plaintiff, and for reasons therefor, says:

1. Plaintiffs' complaint and the answers of the defendant United States of America and intervening defendants on file herein show that there is no genuine issue as to any material fact in this case.

2. Plaintiff is entitled to a judgment as a matter of law.

Frank L. Mulholland, Clarence M. Mulholland, Willard H. McEwen, 741 Nicholas Building, Toledo 4, Ohio. Edward J. Hickey, Jr., 620 Tower Building, Washington 5, D. C., Attorneys for plaintiff.

Of Counsel. Mulholland, Robie, McEwen & Hickey, 620 Tower Building, Washington 5, D. C.

Dated: April 21, 1949.

[fol. 61] Certificate of Service

I hereby certify that the foregoing motion for summary judgment was served upon the defendant parties of record in this procedure by personally serving a copy thereof this

21st day of April, 1949, upon the following named counsel for each of said parties:

Edward Dumbauld and William D. McFarland, Special Attorneys to the Attorney General, Department of Justice, Washington 25, D. C., Attorneys for the defendant United States of American.

Daniel W. Knowlton, Chief Counsel, Interstate Commerce Commission, Interstate Commerce Commission, Washington 25, D. C.

Henry A. Walker and W. S. Macgill, Southern Railway Building, 15th and K Streets, N. W., Washington 5, D. C., Attorneys for railroad intervenors.

Edward J. Hickey, Jr.

[fol. 62] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION OF RAILROAD INTERVENOR DEFENDANTS FOR SUMMARY JUDGMENT—Filed April 22, 1949

Now come the railroad intervenor defendants, City of New Orleans, Louisiana, Chicago, St. Louis and New Orleans Railroad Company, Gulf Mobile and Ohio Railroad Company, Illinois Central Railroad Company, Louisiana and Arkansas Railway Company, Louisville and Nashville Railroad Company, Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, Debtor, New Orleans and Northeastern Railroad Company, New Orleans Terminal Company, Texas and New Orleans Railroad Company, The Texas and Pacific Railway Company, Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans, through their attorneys, and move the court to grant summary judgment for the defendants, and for reasons therefor, say:

1. The pleadings on file herein show that there is no genuine issue as to any material fact in this case.

2. Defendants are entitled to judgment as a matter of law.

Henry B. Curtis, City Hall, New Orleans 7, La. Harry McCall, 724 Whitney Building, New Orleans, Louisiana. D. C. Fitch, Jr., 1025 Elm Street, Dallas 2, Texas. Henry L. Walker, W. S. Macgill, Southern Railway Building, 15th & K Streets, N. W., Washington 5, D. C., Attorneys for Railroad Intervenors.

Dated: April 22, 1949.

[fol. 63] Notice of Service

I hereby certify that a copy of the foregoing Motion of Railroad Intervenor Defendants for Summary Judgment was mailed, postage prepaid, to Edward J. Hickey, Jr., counsel for plaintiff, 620 Tower Building, Washington 5, D. C.; to Edward Dumbauld and William D. McFarland, Special Assistants to the Attorney General, attorneys for the defendant United States of America, Department of Justice, Washington 25, D. C.; and to Daniel W. Knowlton, Chief Counsel for the Interstate Commerce Commission, Interstate Commerce Commission, Washington 25, D. C., on the 22nd day of April 1949.

W. S. Macgill.

[fol. 64] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[Title omitted]

COUNTER MOTION OF DEFENDANTS, UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, FOR SUMMARY JUDGMENT—Filed April 25, 1949

Come now the defendants, United States of America and Interstate Commerce Commission, through their attorneys and move the Court to grant summary judgment for defendants United States of America and Interstate Commerce Commission and for the reasons therefor, say:

1. Plaintiff's complaint and the answers of the defendants United States of America, Interstate Commerce Com-

mission and intervening defendants on file herein show that there is no genuine issue as to any material fact in this case.

2. Defendants United States of America and Interstate Commerce Commission are entitled to a judgment as a matter of law.

Dated April 25, 1949.

Edward Dumbauld, Special Assistant to the Attorney General; William D. McFarlane, Special Assistant to the Attorney General, Attorneys for the United States of America, Department of Justice, Washington, D. C.; Daniel W. Knowlton, Chief Counsel, Attorney for the Interstate, Commerce Commission.

Herbert A. Bergson, Assistant Attorney General; George Morris Fay, United States Attorney.

[fol. 65] I certify that a copy of the foregoing counter motion of defendants, United States of America and Interstate Commerce Commission, for summary judgment was this day mailed to the following persons:

Edward J. Hickey, Jr., Esq., 620 Tower Building, Washington 5, D. C.

W. S. Macgill, Esq., Attorney for City of New Orleans, La., Chicago, St. Louis and New Orleans Railroad Company, et al., Intervenors, Box 1808, Washington 13, D. C.

This 25th day of April, 1949.

William D. McFarlane, Special Assistant to the Attorney General.

[fol. 66] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 646-49

RAILWAY LABOR EXECUTIVES' ASSOCIATION, Plaintiff,

v.

UNITED STATES OF AMERICA, et al., Defendants

Before Clark, Circuit Judge, and Bailey and Pine, District Judges, Sitting as a Statutory Three-Judge Court

MEMORANDUM OPINION OF THREE-JUDGE COURT—Filed May 27, 1949

PINE, J.:

This is an action to set aside, in part, an order of the Interstate Commerce Commission. The defendants are the United States and the Interstate Commerce Commission. The City of New Orleans and certain railroad companies have been granted leave to intervene as defendants. All parties and intervenors have respectively moved for summary judgment. There is no genuine issue of a material fact.

The order involved herein granted the railroad intervenors authority under the Interstate Commerce Act to rearrange their tracks incident to the construction of a Union Passenger Terminal in the City of New Orleans. Plaintiff seeks to set aside that part of the order making provision for protecting the interests of employees adversely affected by the grant of authority.

The total number of employees affected has been estimated at 1022. The number required to operate the Union Passenger Terminal has been estimated at 680. So far as feasible the personnel will be recruited from employees displaced. The estimates indicate a net displacement of from 300 to 350 employees. The physical consummation of the project will require four or five years.

The part of the order to which exception is taken provides as follows:

> "We are of opinion that a fair and equitable arrangement for protecting the interests of employees adversely affected by the applicants' proposals here will be provided by conditions similar to conditions (4) to (9) inclusive, imposed by us in Oklahoma Ry. Co. Trustees Abandonment, 257 I. C. C. 177 (197-201) which are similar to those prescribed in Chicago, B. & Q. R. Co., Abandonment, supra, and our approval and authorization herein will be granted subject to those conditions."

[fol. 67] The order in Oklahoma Railway Co. Trustees Abandonment, referred to, contains the following language:

> "The period during which this protection is to be given, hereinafter called the protective period, shall extend from the date on which the employee was displaced to the expiration of four years from the effective date of our order herein; provided, however, that such protection shall not continue for a longer period following the effective date of our order herein than the period during which such employee was in the employ of the carriers prior to the effective date of our order."

The statute under which the order was made is Section 5(2)(f) of the Transportation Act of 1940,[1] and so far as material, reads as follows:

> "As a condition of its approval . . . the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded . . . shall not

[1] 49 U. S. C. A. 5(2)(f).

be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order."

Plaintiff contends that the four-year period specified in the statute fixes the minimum period of employee protection, leaving the Commission with discretion to extend such period, and proposed before the Commission that the protection should continue for at least four years from the time employees shall be adversely affected, it being plaintiff's position that the order involved herein provides no protection whatever to employees who will be adversely affected by authorized transactions which will not be completed until after the protected period prescribed has expired. Defendants contend that the language plainly does not authorize the Commission to prescribe any protective period, other than a "period of four years from the effective date" of the Commission's order of approval, the only qualification being in the case of employees of less than four years employment, where the protective period cannot be longer than the employees' prior employment.

[fol. 68] The issue here involved therefore concerns merely an interpretation of the provisions of Section 5(2)(f) of the Transportation Act. It does not involve the review of any discretion exercised by the Commission, as that body has held that "the fair and equitable arrangement contemplated by Section 5(2)(f) is measured by the specification therein of a protective period of four years from the effective date of our order approving the transaction within the scope of Section 5(2)(f)."

In our view the language of the statute in question is clear and unambiguous and the Commission's interpretation is correct. The first sentence thereof provides that the Commission shall require fair and equitable arrangements to protect the interests of employees affected. The second sentence prescribes the standard for such arrangements, namely that they shall be such that the employees will not be placed in a worse position with respect to their employment, and then proceeds to limit the time of such protection, namely four years from the effective date of [illegible] approval order. In addition, this interpretation is in accordance with

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 337

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
Appellant,

vs.

THE UNITED STATES OF AMERICA, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

STATEMENT AS TO JURISDICTION

CLARENCE M. MULHOLLAND,
EDWARD J. HICKEY, JR.,
Counsel for Appellant.

the Commission's prior construction of the statute,[2] and on that account is entitled to great weight. Finally, the legislative history set forth by counsel for the defendants in their briefs is corroborative of the Commission's interpretation of the statute.

[fol. 69] We are therefore of the view that the motions for summary judgment filed by the defendants should be granted and the complaint should be dismissed.

Counsel will submit appropriate order.

Bennett Champ Clark, Circuit Judge; Jennings Bailey, District Judge; David A. Pine, District Judge.

May 27, 1949.

[fol. 70] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 646-49

RAILWAY LABOR EXECUTIVES' ASSOCIATION, Plaintiff,

v.

UNITED STATES OF AMERICA, et al., Defendants

JUDGMENT, ORDER AND DECREE—Filed June 17, 1949

This cause came on to be heard on the 6th day of May 1949, on an action to set aside in part an order of the Interstate Commerce Commission, and all parties and intervenors having moved for summary judgment, there being no genuine issue of a material fact, and the Court having heard the arguments of counsel for all parties, and the Court having

[2] Texas & Pac. Ry. Co., et al., Operation, etc. (1941), 247 I. C. C. 285, 295, 296; Chicago, Milwaukee, St. Paul & Pac. Ry. Co., Trustees, et al., Construction, etc. (1942), 252 I. C. C. 49, 66, 252 I. C. C. 287, 257 I. C. C. 292; Okla. Ry. Co. Trustees, Abandonment, etc., 257 I. C. C. 177, 196-202; Chicago, Burlington & Quincy R. R. Co. (1944), 257 I. C. C. 700.

considered the matter and being fully advised in the premises, and having concluded, found and determined that the motions for summary judgment filed by the defendants should be granted and the complaint dismissed,

It is hereby ordered, adjudged and decreed that the motions for summary judgment filed by the defendants, be and they are hereby granted, and the complaint is hereby dismissed with prejudice at plaintiff's costs.

This 17th day of June, 1949.

Bennett Champ Clark, Circuit Judge; Jennings Bailey, District Judge; David A. Pine, District Judge.

Seen: Edward J. Hickey, Jr., Attorney for Plaintiffs; Daniel W. Knowlton, Chief Counsel, Interstate Commerce Commission; W. S. Macgill, Attorney for Railroad Intervenors.

[fol. 71] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[Title omitted]

PETITION FOR APPEAL—Filed August 16, 1949

Railway Labor Executives' Association, plaintiff in the above-entitled cause, feeling itself aggrieved by the final judgment and decree of this Court entered on June 17, 1949, pray an appeal from said judgment and decree to the Supreme Court of the United States.

The particulars wherein said plaintiff considers the judgment and decree erroneous are set forth in the Assignment of Errors accompanying this petition, to which reference is hereby made.

Said plaintiff prays that a transcript of the record, proceedings and papers on which said judgment and decree was made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

Dated August 16, 1949.

Clarence M. Mulholland, Edward J. Hickey, Jr., Attorneys for Plaintiff.

[fol. 72] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[Title omitted]

NOTICE OF APPEAL—Filed August 16, 1949

To: The Attorney General of the United States, Interstate Commerce Commission, Above-named Intervening Railroads:

Please take notice that, pursuant to the statutes and rules of court in such case made and provided, the Railway Labor Executives' Association, plaintiff in the above-entitled cause, does hereby appeal to the Supreme Court of the United States from the final judgment and decree of the [fols. 73-74] United States District Court in the District of Columbia made and entered on June 17, 1949, denying the relief prayed by plaintiff and dismissing the complaint.

Dated August 16, 1949.

Clarence M. Mulholland, Edward J. Hickey, Jr., Attorneys for Plaintiff.

[fol. 75] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER ALLOWING APPEAL—Filed August 16, 1949

The Railway Labor Executives' Association, plaintiff in the above-entitled cause, having made and filed a petition praying an appeal to the Supreme Court of the United States from the final judgment and decree of this Court in said cause entered on June 17, 1949, and having also made and filed an Assignment of Errors, and a Statement of Jurisdiction, and having in all respects conformed to the statutes and rules of court in such cases made and provided:

It is ordered and decreed, that the said appeal be, and the same is hereby, allowed as prayed.

Dated August 16, 1949.

R. B. Keech, United States District Judge.

[fols. 76-97] Citation in usual form, filed August 16, 1949, omitted in printing.

[fol. 98] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ASSIGNMENT OF ERRORS.—Filed August 16, 1949

Now comes the Railway Labor Executives' Association, plaintiff in the above-entitled cause, and in connection with their appeal herein, files the following assignment of errors upon which it will rely in its prosecution of said appeal to the Supreme Court of the United States from the final judgment and decree of the District Court dated June 17, 1949.

The District Court erred:

1. In holding and concluding that under Section 5(2)(f) of the Interstate Commerce Act the Interstate Commerce Commission has no authority to provide any other period of protection than one of four years from the effective date of its order.

2. In holding and concluding that the second sentence of the said Section 5(2)(f) provides a standard which restricts the Commission from exercising any discretion in complying with the requirements of the first sentence of said section.

3. In failing to hold and conclude that although the Commission is required by the said Section 5(2)(f) to provide a period of protection of at least four years from the effective date of its order, it is not precluded by that section from providing a longer period if the facts and circumstances of a particular case require such longer

period in order to provide a fair and equitable arrangement for the protection of employees.

[fol. 99] 4. In failing to hold and conclude that the basic intent of Congress in the said Section 5(2)(f) was to provide a fair and equitable arrangement for the protection of employees, adversely affected by consolidation and coordination transactions, and was not simply and exclusively to require protection of a specific sort for a definite period as the sole protection which could be authorized and which might or might not constitute a fair and equitable arrangement for employees.

5. In failing to hold and conclude that the first provision or sentence of the said Section 5(2)(f) has intention, meaning, and purpose separate and apart from the mandatory requirements of the second provision or sentence thereof, with a consequent vesting of discretion in the Commission over and above the specific minimum requirements of the second sentence or provision.

6. In failing to hold and conclude that although the second sentence or provision of the said Section 5(2)(f) states a minimum protection both of type and extent in time which the Commission must provide, the section as a whole does not require the acceptance of said minimum provision as the maximum protection which may be authorized.

7. In construing the said Section 5(2)(f) in such manner as to bring about an inequitable, unreasonable, and unintended result contrary to the basic purpose and intent of Congress in providing the legislation.

8. In holding and concluding that the legislative history of the said Section 5(2)(f) supports the Commission's construction of the statute.

9. In failing to hold and conclude that the legislative history of Section 5(2)(f) does not support the Commission's construction of the statute but does support the construction urged by plaintiff.

10. In holding and concluding that certain decisions of the Commission cited in the District Court's opinion reflect the Commission's prior construction of the statutory provision in question and that on that account the Commission's construction is entitled to great weight.

[fol. 100] 11. In entering a judgment and decree granting defendants' motions for summary judgment and dismissing the Complaint.

12. In failing to hold and conclude that the Commission's construction of Section 5(2)(f) is contrary to law and invalid and should be set aside.

13. In failing to enter a judgment and decree granting plaintiff's motion for summary judgment.

Dated August 16, 1949.

Clarence M. Mulholland, Edward J. Hickey, Jr., Attorneys for Plaintiff.

[fol. 101] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[Title omitted]

PRAECIPE—Filed August 16, 1949

The Clerk will please prepare a transcript of the record in the above-entitled cause to be transmitted to the Clerk of the Supreme Court of the United States and include therein:

1. Complaint to set aside in part an order of the Interstate Commerce Commission.
2. Motion by plaintiff for designation of District Court of three judges.
3. Order of April 8, 1949, designating judges to serve on three-judge District Court.
4. Answer of the United States of America.
5. Intervention of the Interstate Commerce Commission.
6. Answer of the Interstate Commerce Commission.
7. Motion of railroads to intervene as defendants and attached Answer.
8. Order of April 12, 1949, granting railroad intervenors leave to intervene as defendant.
9. Motion of plaintiff, Railway Labor Executives' Association, for summary judgment.

10. Counter motion of defendants, United States of America and Interstate Commerce Commission, for summary judgment.

11. Motion of railroad intervenor defendants for summary judgment.

12. Copy of Report and Order of Interstate Commerce Commission dated April 7, 1948, 267 I. C. C. 763, certified copy of which is attached as Exhibit A to the Complaint. [fol. 102] 13. Memorandum opinion of three-judge District Court dated May 27, 1949.

14. Judgment order and decree of District Court dismissing complaint entered on June 17, 1949.

15. Petition for appeal of plaintiff, Railway Labor Executives' Association, filed August 16, 1949.

16. Order allowing appeal dated August 16, 1949.

17. Citation on Appeal dated August 16, 1949.

18. Statement to appellees pursuant to subparagraph 2 (b) of Rule 12 of the Rules of the Supreme Court.

19. Jurisdictional Statement.

20. Notice of Appeal.

21. Assignment of Errors.

22. Acknowledgment of Service required by subparagraph 2(b) of Rule 12 of the Rules of the Supreme Court.

23. This designation dated August 16, 1949.

Clarence M. Mulholland, Edward J. Hickey, Jr., Attorneys for Plaintiff.

[fol. 103] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER ALLOWING USE OF ORIGINAL RECORD ON APPEAL—Filed September 7, 1949

An order allowing an appeal herein having been entered on August 16, 1949, from the judgment of the court dated June 17, 1949, and plaintiff having requested that the original papers be transmitted on appeal to the Supreme Court, and the defendants having consented thereto, it is hereby

Ordered, Adjudged, and Decreed, pursuant to Rule 75(i) of the Federal Rules of Civil Procedure, that the original papers herein may be transmitted to the Supreme Court of the United States.

Dated September 7th, 1949.

Edward A. Tamm, United States District Judge.

Consented to: W. D. McFarland, Counsel for defendant-appellee, United States of America. Daniel W. Knowlton, Counsel for defendant-appellee, Interstate Commerce Commission. W. S. Macgill, Counsel for defendant-appellee railroads.

[fol. 104] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 105-106] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1949

No. 337

RAILWAY LABOR EXECUTIVES' ASSOCIATION, Appellant,

v.

UNITED STATES OF AMERICA, et al., Appellees

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF RECORD TO BE PRINTED—Filed September 28, 1949

In its brief and oral argument before this Court on its appeal in the above entitled case, appellant will rely upon the points made in its Assignment of Errors.

Appellant further states that the entire record in this cause as filed in this Court pursuant to the praecipe for transcript of record is designated for printing.

Clarence M. Mulholland, 741 Nicholas Building, Toledo 4, Ohio; Edward J. Hickey, Jr., 620 Tower Building, Washington 5, D. C., Attorneys for Appellant, Railway Labor Executives' Association.

Of Counsel, Mulholland, Robie, McEwen & Hickey.

Dated: September 28, 1949.

[fol. 106a] [File endorsement omitted.]

[fol. 107] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—October 24, 1949

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Douglas took no part in the consideration of this order.

Endorsed on Cover: File No. 54086. United States District Court for the District of Columbia. Term No. 337. Railway Labor Executives' Association, Appellant, vs. The United States of America, Interstate Commerce Commission, City of New Orleans, Louisiana, et al. Filed September 15, 1949. Term No. 337 O. T. 1949.